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NEW DELHI, APRIL 30—MAY 6, 2017, SATURDAY/VAISAKHA 10—VAISAKHA 16, 1939

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)

PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय

(कार्मिक और प्रशिक्षण विभाग)

नई दिल्ली, 21 अप्रैल, 2017

का.आ. 1120.—केन्द्र सरकार दिल्ली विशेष पुलिस स्थापन अधिनियम, 1946 (1946 का अधिनियम सं. 25) की धारा 6 के साथ पठित धारा 5 की उप धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए आंध्र प्रदेश राज्य सरकार गृह (एससी) विभाग की सहमति से दिनांक 01.06.2016 की जी.ओ.एम.सं. 67 द्वारा (i) निजी व्यक्तियों द्वारा अलग से या केन्द्र सरकार/केन्द्र सरकार के उपक्रम के कर्मचारियों के साथ मिलीभगत से किए गए और (ii) निजी व्यक्तियों द्वारा अथवा केन्द्र सरकार के कर्मचारियों के साथ मिलीभगत से अथवा उनके साथ कार्य करते प्रथम राजपत्रित स्तर तक के राज्य सरकार के कर्मचारियों के मामले में निम्नलिखित अपराधों के अन्वेषण के लिए उक्त अधिनियम के अधीन दिल्ली विशेष पुलिस स्थापन, 1946 के सदस्यों की शक्तियों और क्षेत्राधिकार का विस्तार एतद्वारा पूरे आंध्र प्रदेश राज्य पर करती है। फिर भी, राज्य सरकार के द्वितीय स्तर के राजपत्रित पदों के अधिकारियों, आसीन अथवा पूर्व विधायकों, संसद सदस्यों और विधान सभा तथा विधान परिषद् के सदस्यों (यहां तक कि सहकारिता आदि के मंत्री/अध्यक्ष भी) के मामले में सीबीआई प्रत्येक मामले में राज्य सरकार की पूर्व सहमति होगी लेगी।

(क) (i) भ्रष्टाचार निवारण अधिनियम, 1988 की संगत धाराओं के अधीन दण्डनीय अपराध (1988 का केन्द्रीय अधिनियम 49)

(ii) भारतीय दण्ड संहिता के अधीन अपराध (1860 का केन्द्रीय अधिनियम 45) (अनुबंध-I में सूची)

(iii) केन्द्रीय अधिनियम के अधीन अपराध (अनुबंध-II में सूची)

(ख) उपरोक्त खण्ड (क) में विनिर्दिष्ट एक या अधिक अपराधों से संबंधित प्रयास, दुष्प्रेरण और आपराधिक षडयंत्रों और उक्त के सम्पादन के दौरान अन्य कोई अपराध ।

[फा. सं. 228/14/2017-एवीडी-II]

एस. पी. आर. त्रिपाठी, अवर सचिव

अनुबंध-I

क. भारतीय दण्ड संहिता, 1860 (1860 का अधिनियम 45) की धारा 34, 114, 120-बी, 121, 121-ए, 122, 123, 124, 124-ए, 128, 129, 130, 131, 132, 133, 134, 135, 136, 138, 140, 143, 147, 148, 149, 153, 153-ए, 153-बी, 161, 162, 163, 164, 165, 165-ए, 166, 167, 168, 169, 171-ई, 171-एफ, 182, 186, 188, 189, 190, 193, 196, 197, 198, 199, 200, 201, 203, 204, 211, 212, 214, 216, 216-ए, 218, 220, 222, 223, 224, 225, 225-बी, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 263-ए, 275, 277, 279, 283, 284, 285, 286, 292, 295, 295-ए, 403, 406, 407, 408, 409, 411, 412, 413, 414, 417, 418, 419, 420, 421, 426, 427, 429, 431, 435, 436, 440, 447, 448, 465, 466, 467, 468, 469, 471, 472, 473, 474, 475, 476, 477, 477-ए, 489, 489-ए, 489-बी, 489-सी, 489-डी, 489-ई, 495, 498-ए, 499, 500, 501, 502, 504, 505, 506, 507, 509 के अधीन दंडनीय अपराध ।

अनुबंध-II

केन्द्रीय अधिनियम के अंतर्गत दंडनीय अपराध

1. वायुयान अधिनियम, 1934 (1934 का अधिनियम सं. 22) और उक्त अधिनियम के अधीन बनाए गए नियम
2. यान-हरण निवारण अधिनियम, 1982 (1982 का अधिनियम सं. 65)
3. पुरावशेष तथा बहुमूल्य कलाकृति अधिनियम, 1972 (1972 का अधिनियम सं. 52)
4. आयुध अधिनियम, 1959 (1959 का अधिनियम सं. 54)
5. परमाणु ऊर्जा अधिनियम, 1962 (1962 का अधिनियम सं. 33)
6. केंद्रीय उत्पाद शुल्क तथा नमक अधिनियम, 1944 (1944 का अधिनियम सं. 1)
7. बेनामी संव्यवहार (प्रतिषेध) अधिनियम, 1988 (1988 का अधिनियम सं. 45) की धारा 3
8. कंपनी अधिनियम, 1956 (1956 का अधिनियम सं. 1)
9. प्रतिलिप्याधिकार अधिनियम, 1957 (1957 का अधिनियम सं. 14) की धारा 63, 63-ए, 63-बी, 65, 67, 68, 68-ए, और 69
10. दंड कानून (संशोधन) अधिनियम, 1961 (1961 का अधिनियम सं. 23)
11. सीमा शुल्क अधिनियम, 1962 (1962 का अधिनियम सं. 52)
12. औषधि तथा प्रसाधन सामग्री अधिनियम, 1940 (1940 का अधिनियम सं. 23)
13. प्रवासन अधिनियम, 1983 (1983 का अधिनियम सं. 31) की धारा 24
14. अत्यावश्यक वस्तु अधिनियम, 1955 (1955 का अधिनियम सं. 10)
15. विस्फोटक पदार्थ अधिनियम, 1884 (1884 का अधिनियम सं. 4)
16. विस्फोटक वस्तु अधिनियम, 1908 (1908 का अधिनियम सं. 6)

17. आपातकालीन संकट उपबंध (जारी) अध्यादेश, 1946 (1946 का अध्यादेश सं. 20) यदि केंद्रीय सरकार द्वारा जारी किसी आदेश का अतिक्रमण करके केंद्रीय सरकार के कर्मचारियों या सविदाकारों या उप-सविदाकारों या उनके प्रतिनिधियों द्वारा प्रतिबद्ध किया गया हो
18. विदेशी अभिदाय (विनियमन) अधिनियम, 1976 (1976 का अधिनियम सं. 49)
19. विदेशियों विषयक अधिनियम, 1946 (1946 का अधिनियम सं. 31)
20. विदेशी मुद्रा विनियमन अधिनियम, 1973 (1973 का अधिनियम सं. 46)
21. साधारण बीमा कारोबार (राष्ट्रीयकरण) अधिनियम, 1922 (1922 का अधिनियम सं. 57)
22. उपहार-कर अधिनियम, 1958 (1958 का अधिनियम सं. 18)
23. स्वर्ण नियंत्रण अधिनियम, 1968 (1968 का अधिनियम सं. 45)
24. आयकर अधिनियम, 1961 (1961 का अधिनियम सं. 43)
25. आयात एवं निर्यात (नियंत्रण) अधिनियम, 1947 (1947 का अधिनियम सं. 18)
26. अनैतिक देह व्यापार (निवारण) अधिनियम, 1956 (1956 का अधिनियम सं. 104) की धारा 3, 4, 5, 8, 9 और 15
27. बीमा अधिनियम, 1938 (1938 का अधिनियम सं. 4)
28. उद्योग (विकास तथा विनियमन) अधिनियम, 1951 (1951 का अधिनियम सं. 65)
29. सूचना और प्रौद्योगिकी अधिनियम, 2000 (2000 का अधिनियम सं. 21)
30. भारतीय स्टाम्प अधिनियम, 1899
31. खान और खनिज (विकास और विनियमन) अधिनियम, 1957 (1957 का अधिनियम सं. 67)
32. मोटर वाहन अधिनियम, 1939 (1939 का अधिनियम सं. 4)
33. स्वापक औषध तथा नशीली वस्तु अधिनियम, 1985 (1985 का अधिनियम सं. 61)
34. परक्राम्य लिखत अधिनियम, 1881 (1881 का अधिनियम सं. 26) की धारा 138
35. शासकीय गोपनीयता अधिनियम, 1923 (1923 का अधिनियम सं. 19)
36. पासपोर्ट अधिनियम, 1920 (1920 का अधिनियम सं. 24) और पासपोर्ट नियमावली, 1950 का नियम-6
37. पासपोर्ट (भारत में प्रवेश) नियमावली, 1950 संपठित (भारत में प्रवेश) अधिनियम, 1920 (1920 का अधिनियम सं. 34)
38. पासपोर्ट अधिनियम, 1967 (1967 का अधिनियम सं. 15)
39. खाद्य अपमिश्रण निवारण अधिनियम, 1954 (1954 का अधिनियम सं. 37)
40. लोक संपत्ति नुकसान निवारण अधिनियम, 1984 (1984 का अधिनियम सं. 3)
41. स्वापक औषध तथा नशीली वस्तुओं का अवैध दुर्व्यापार निवारण अधिनियम, 1988 (1988 का अधिनियम सं. 46)
42. प्रेस और पुस्तक पंजीकरण अधिनियम, 1867 (1867 का अधिनियम सं. 25)
43. इनामी चिट और धन परिचालन स्कीम (पाबंदी) अधिनियम, 1978 (1978 का अधिनियम सं. 43) की धारा 4 और 5
44. डाकघर अधिनियम, 1898 (1898 का अधिनियम सं. 6)

45. रेलवे अधिनियम, 1890 (1890 का अधिनियम सं. 9)
46. रेलवे सामग्री (अनधिकृत कब्जा) अधिनियम, 1955 (1955 का अधिनियम सं. 51)
47. रेलवे अधिनियम, 1989 (1989 का अधिनियम सं. 24)
48. विदेशियों का पंजीकरण अधिनियम, 1939 (1939 का अधिनियम सं. 16)
49. भारतीय प्रतिभूति और विनिमय बोर्ड अधिनियम, 1992 की धारा 24
50. नागर विमानन सुरक्षा अनधिकृत कृत्य दमन अधिनियम, 1982 (1982 का अधिनियम सं. 66)
51. प्रादेशिक सागर-खंड, महाद्वीपीय मग्नतट भूमि, अनन्य आर्थिक क्षेत्र और अन्य सामुद्रिक क्षेत्र अधिनियम, 1976 (1976 का अधिनियम सं. 80) की धारा 11 और 12
52. टेलीग्राफ अधिनियम, 1885 (1885 का अधिनियम सं. 13)
53. टेलीग्राफ (अनधिकृत कब्जा) अधिनियम, 1950 (1950 का अधिनियम सं. 74)
54. बेतार तार यांत्रिकी अधिनियम, 1933 (1933 का अधिनियम सं. 17)
55. सम्पत्ति कर अधिनियम, 1957 (1957 का अधिनियम सं. 27)
56. वन्य जीव (संरक्षण) अधिनियम, 1972 (1972 का अधिनियम सं. 53) की धारा 51

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS

(Department of Personnel and Training)

New Delhi, the 21st April, 2017

S.O. 1120.—In exercise of the powers conferred by sub-section (1) of section 5 read with section 6 of the Delhi Special Police Establishment Act, 1946 (Act No.25 of 1946) the Central Government with the consent of the State Government of Andhra Pradesh accorded vide Home (SC.A) Department G.O Ms. No.67 of Home (SC.A) Department, dt.01.06.2016 hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment Act, 1946 to the whole of the State of Andhra Pradesh for investigation of the offences mentioned here under against (I) Private Persons for alleged offences committed whether acting separately or in conjunction with Central Government/Central Government Undertaking employees and, in case of (II) State Government employees upto First Gazetted Level when acting along with or in conjunction with private persons or Central Government employees. However, in case of State Government employees from 2nd level Gazetted posts, sitting or former legislators, Members of Parliament and Members of Legislative Assembly and Legislative Council (even Ministers/Chairmen of Corporations etc.), the CBI shall obtain prior consent of State Government in each case:

- (a)
 - (i) offences punishable under the relevant section of prevention of Corruption Act, 1988 (Central Act 49 of 1988).
 - (ii) offences under the Indian Penal Code (Central Act 45 of 1860) (List in Annexure-I)
 - (iii) offence under the Central Acts (List in Annexure-II).
- (b) attempts, abetments and criminal conspiracies in relation to or in connection with one or more offences specified in clause (a) above and any other offences committed in the course of the same transaction.

[F. No. 228/14/2017-AVD-II]

S. P. R. TRIPATHI, Under Secy.

ANNEXURE I

IPC offences punishable under section 34, 114, 120 –B, 121, 121-A, 122, 123, 124, 124-A, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 143, 147, 148, 149, 153, 153-A, 153-B, 161, 162, 163, 164, 165, 165-A, 166, 167, 168, 169, 171-E, 171-F, 182, 186, 188, 189, 190, 193, 196, 197, 198, 199, 200, 201, 204, 211, 212, 214, 216, 216-A, 218, 220, 222, 223, 224, 225, 225-B, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 263-A, 275,

277, 279, 283, 284, 285, 286, 292, 295, 295-A, 403, 406, 407, 408, 409, 411, 412, 413, 414, 417, 418, 419, 420, 426, 427, 429, 431, 435, 436, 440, 447, 448, 465, 466, 467, 468, 469, 471, 472, 473, 474, 475, 476, 477, 477-A, 489, 489-A, 489-B, 489-C, 489-D, 489-E, 495, 498-A, 499, 500, 501, 502, 504, 505, 506, 507, 509 of Indian Penal code, 1860 (Act. No.45 of 1860).

ANNEXURE II

Central Acts: Offences punishable under:

1. Aircraft Act, 1934 (Act No. 22 of 1934) and rules made under the said Act.
2. Anti Hijacking Act, 1982 (Act No. 65 of 1982).
3. Antiquities and Art Treasures Act, 1972 (Act No. 52 of 1972)
4. Arms Act 1959 (Act No. 54 of 1959).
5. Atomic Energy Act, 1962 (Act No. 33 of 1962)
6. Central Excise and Salt Act. 1944 (Act No. 1 of 1944).
7. Section 3 of Benami Transaction (Prohibition) Act, 1988 (Act No. 45 of 1988)
8. Companies Act, 1956 (Act No. 1956).
9. Section 63, 63-A, 63-B, 65, 67, 68, 68-A and 69 of Copyrights Act, 1957 (Act No.14 of 1957)
10. Criminal Law (Amendment) Act, 1961 (Act No. 23 of 1961).
11. Customs Act, 1962 (Act No.52 of 1962).
12. Drugs and Cosmetics Act, 1940 (Act No. 23 of 1940).
13. Section 24 of Emigration Act, 1983 (Act No. 31 of 1983)
14. Essential Commodities Act, 1955 (Act No 10 of 1955)
15. Explosives Act, 1884 (Act No 4 of 1884).
16. Explosives Substances Act, 1908 (Act No. 6 of 1908).
17. Emergency Provisions (Continuance) Ordinance, 1946 (Ordinance No.20 of 1946) if committed by the Employees of the Central Government or contractors or sub-contractors or their representative by contravening order issued by the Central Government.
18. Foreign Contribution (Regulation) Act, 1976 (Act No.49 of 1976)
19. Foreigners Act, 1946 (Act No. 31 of 1946).
20. Foreign Exchange Regulation Act, 1973 (Act No. 46 of 1973)
21. General Insurance Business (Nationalisation) Act, 1922 (Act No. 57 of 1922)
22. Gift Tax Act, 1958 (Act No. 18 of 1958)
23. Gold Control Act, 1968 (Act No 45 of 1968).
24. Income Tax Act, 1961 (Act No. 43 of 1961)
25. Import and Export Control Act, 1947 (Act No 18 of 1947)
26. Section 3, 4, 5, 8, 9 and 15 of the Immoral Traffic (Prevention) Act, 1956 (Act No. 104 of 1956)
27. Insurance Act, 1938 (Act No. 4 of 1938).
28. Industries (Development and Regulation) Act, 1951 (Act No. 65 of 1951).
29. Information Technology Act, 2000 (Act No. 21 of 2000)
30. India stamp Act, 1899
31. Mines and mineral (Regulation and Development) Act, 1957 (Act No. 67 of 1957)
32. Motor Vehicles Act, 1939 (Act No. 4 of 1939)
33. Narcotic Drugs and Psychotropic Substance Act, 1985 (Act No. 61 of 1985).

34. Section 138 of the Negotiable Instruments Act, 1881 (Act No. 26 of 1881)
35. Officials Secrets Act, 1923 (Act No. 19 of 1923).
36. Passport Act, 1920 (Act No. 24 of 1920) and Rule-6 of Passport Rules, 1950.
37. The passport (Entry into India) Rules. 1950 r/w Passport (Entry into India) Act, 1920 (Act No. 34 of 1920)
38. Passport Act, 1967 (Act No. 15 of 1967)
39. Prevention of Food Adulteration Act, 1954 (Act No. 37 of 1954)
40. Prevention of Damage to Public Property Act, 1984 (Act No. 3 of 1984)
41. The prevention of Illicit traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (Act No. 46 of 1988)
42. The Press and Registration of Books Act, 1867 (Act No. 25 of 1867)
43. Section 4 and 5 of the Prize Chits and Money Circulation Scheme (Banning) Act, 1978 (Act No. 43 of 1978)
44. Post Office Act, 1898 (Act No. 6 of 1898)
45. Railways Act, 1890 (Act No. 9 of 1890)
46. Railways Stores (Unlawful Possession) Act, 1955 (Act No.51 of 1955)
47. Railways Act, 1989 (Act No. 24 of 1989)
48. Registration of Foreigners Act, 1939 (Act No. 16 of 1939)
49. Section 24 of the Secrity Exchange Board of Binders Act, 1942
50. Suppression Unlawful Acts against Safety of Civil Aviation Act, 1982 (Act No.66 of 1982)
51. Sections 11 and 12 of the Territorial Waters Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 (Act No. 80 of 1976)
52. Telegraph Act, 1885 (Act No. 13 of 1885)
53. Telegraph Wires (Unlawful Possession) Act, 1950 (Act No. 74 of 1950)
54. Wireless and Telegraphy Act, 1933 (Act No. 17 of 1933)
55. Wealth Tax Act, 1957 (Act No. 27 of 1957)
56. Section 51 of Wildlife Protection Act, 1972 (Act No. 53 of 1972)

वित्त मंत्रालय

(वित्तीय सेवाएं विभाग)

नई दिल्ली, 19 अप्रैल, 2017

का.आ. 1121.—जीवन बीमा अधिनियम, 1956 (1956 का 31) की धारा 4 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारतीय जीवन बीमा निगम (एलआईसी) के निम्नलिखित प्रबंध निदेशकों (एमडी) को 11 अप्रैल, 2017 के अपराह्न से पांच वर्ष की अवधि के लिए अथवा उनकी अधिवर्षिता की तारीख तक अथवा अगले आदेशों तक, जो भी पहले हो, उक्त निगम के सदस्य के रूप में नियुक्त करती है।

क्रम सं.	नाम एवं वर्तमान पदनाम
1.	श्री बी. वेणुगोपाल, प्रबंध निदेशक, एलआईसी
2.	श्रीमती सुनीता शर्मा, प्रबंध निदेशक, एलआईसी

[फा. सं. ए-15011/01/2014-बीमा-I]

एस. के. मोहन्ती, अवर सचिव

MINISTRY OF FINANCE
(Department of Financial Services)

New Delhi, the 19th April, 2017

S.O. 1121.—In exercise of the powers conferred Section 4 of the Life Insurance Corporation Act, 1956 (31 of 1956), the Central Government hereby appoints the following Managing Directors (MDs) in Life Insurance Corporation of India (LIC) as Members of the said Corporation with effect from the afternoon of 11th April, 2017 for a period of five years, or up to the date of their superannuation, or until further orders, whichever is earliest.

Sl. No.	Name & Designation
1.	Shri B. Venugopal, Managing Director, LIC
2.	Smt. Sunita Sharma, Managing Director, LIC

[F. No. A-15011/01/2014-Ins.-I]

S. K. MOHANTY, Under Secy.

विदेश मंत्रालय

(सी.पी.वी. प्रभाग)

नई दिल्ली, 30 मार्च, 2017

का.आ. 1122.—राजनयिक और कौंसुलीय अधिकारी (शपथ एवं फीस) के अधिनियम, 1948 की धारा 2 के खंड (क) के अनुसरण में वैधानिक आदेश ।

एतद्वारा, केंद्र सरकार भारत के दूतावास, वार्सा में श्रीमती परवीन जफर, सहायक अनुभाग अधिकारी को दिनांक 20 मार्च, 2017 से सहायक कौंसुलर अधिकारी के तौर पर कौंसुलर सेवाओं के निर्वहन के लिए प्राधिकृत करती है ।

[सं. टी-4330/01/2016]

प्रकाश चन्द, निदेशक (कौंसुलर)

MINISTRY OF EXTERNAL AFFAIRS
(CPV DIVISION)

New Delhi, the 30th March, 2017

S.O. 1122.—Statutory Order in pursuance of clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948 (41 of 1948), the Central Government hereby appoints Smt. Parween Zaffer, Assistant Section Officer as Assistant Consular Officer in Embassy of India, Warsaw to perform the Consular services with effect from 20th March, 2017.

[No. T-4330/01/2016]

PRAKASH CHAND, Director (Consular)

सूक्ष्म, लघु और मध्यम उद्यम मंत्रालय

नई दिल्ली, 24 अप्रैल, 2017

का.आ. 1123.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप-नियम (4) के अनुसरण में, सूक्ष्म, लघु और मध्यम उद्यम मंत्रालय के नियंत्रणाधीन राष्ट्रीय लघु उद्योग निगम लिमिटेड के निम्नलिखित कार्यालयों जिनके 80 प्रतिशत से अधिक कर्मचारियों ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को एतद्वारा अधिसूचित करती है:

1. शाखा कार्यालय, वाराणसी राष्ट्रीय लघु उद्योग निगम लिमिटेड, मानसरोवर कम्प्लेक्स, सी-30/35 बी, दूसरी मंजिल, मालदहिया, वाराणसी-221001 (उत्तर प्रदेश),
2. शाखा कार्यालय, लखनऊ राष्ट्रीय लघु उद्योग निगम लिमिटेड, 503, पांचवी मंजिल, श्रीराम टावर, 13 अशोक मार्ग, लखनऊ-226001,

3. शाखा कार्यालय, गाजियाबाद राष्ट्रीय लघु उद्योग निगम लिमिटेड, 110,111,116,117, प्रथम तल, असंल सुमेदा टावर, राज नगर, जिला केन्द्र, गाजियाबाद-201001

[सं. ई-12016/01/2005-हिन्दी]

मनोज जोशी, संयुक्त सचिव

MINISTRY OF MICRO, SMALL AND MEDIUM ENTERPRISES

New Delhi, the 24th April, 2017

S.O. 1123.—In pursuance of sub-rule (4) of Rule 10 of the Official Language (Use for official purposes of the Union) Rules, 1976, the Central Government hereby notifies the following offices of National Small Industries Corporation Limited under the control of the Ministry of Micro, Small & Medium Enterprises, whose more than 80% staff has acquired working knowledge in Hindi:

1. Branch Office, Varanasi, National Small Industries Corporation Limited Mansarovar Complex, C-30/35 B, 2nd Floor, Maladhiya Varanasi -221001 (Uttar Pradesh)
2. Branch Office, Lucknow, National Small Industries Corporation Limited, 503, Fifth floor, Shriram Tower, 13 Ashok Marg, Lucknow -226001
3. Branch Office, Ghaziabad National Small Industries Corporation Limited, 110, 111, 116, 117, 1st Floor, Ansal Sumeda Tower, Raj Nagar, District Center Ghaziabad 201001

[No. E-12016/01/2005-Hindi]
MANOJ JOSHI, Jt. Secy.

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 25 अप्रैल, 2017

का.आ. 1124.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार अध्यक्ष एवं प्रबंधक निदेशक, बीएसएनएल, संचार भवन, नई दिल्ली व अन्य एवं उनके कर्मचारी के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 23/2005, 24/2005, 26/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.04.2017 को प्राप्त हुआ था।

[सं. एल-40011/25/2004-आईआर (डीयू),

सं. एल-40011/26/2004-आईआर (डीयू),

सं. एल-40011/28/2004-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 25th April, 2017

S.O. 1124.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Nos. 23/2005, 24/2005, 26/2005) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the industrial dispute between the employers in relation to the Chairman & Managing Director, BSNL, Sanchar Bhawan, New Delhi & others and their workman, which was received by the Central Government on 03.04.2017.

[No. L-40011/25/2004-IR (DU),

No. L-40011/26/2004-IR (DU),

No. L-40011/28/2004-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
CHENNAI**Wednesday, the 22nd March, 2017**Present : K.P. PRASANNA KUMARI, Presiding Officer****Industrial Dispute Nos. 23, 24 and 26 of 2005**

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Bharat Sanchar Nigam Ltd. and their workman)

BETWEEN :

The Circle Secretary : 1st Party/Petitioner Union
 BSNL Employees Union
 R.K. Srinivas Apartments
 No. 21, Bharathiyar 1st Street, Palavanthagal
 Chennai-600114

AND

1. The Chairman & Managing Director : 2nd Party/1st Respondent
 BSNL, Sanchar Bhawan
 New Delhi-1
2. The Chief General Manager : 2nd Party/2nd Respondent
 BSNL, Tamil Nadu Telecom Circle
 Anna Salai
 Chennai-600002
3. The General Manager : 2nd Party/3rd Respondent
 BSNL
 Hospital Road
 Cuddalore-607001
4. Sri Somasundaram : 2nd Party/4th Respondent
 Ex-Serviceman Security & Intelligence
 Service
 10, Vazhudavour Road
 Pettaianchandiram
 Pondicherry-605009
5. Muthusamy : 2nd Party/5th Respondent
 M/s Muthu Security Service
 16, RVS Nagar
 Cuddalore-607001
6. D. Manivannan : 2nd Party/6th Respondent
 M/s Kalai Industrial Security Services
 26-A, Annai Teresa Street, Raja Nagar
 Puducherry-605013
7. M/s Online Consultancy Services : 2nd Party/7th Respondent
 No. 896/11, First Floor
 Mahalakshmi Puram
 Bangalore-560086

Appearance :

For the 1st Party/Petitioner Union : M/s. K.M. Ramesh, Advocates
 For the 2nd Party/1st, 2nd & 3rd Respondents : Sri Priyakumar, Advocates
 For the 4th Party/Respondent : Sri Abdul Faizal, Advocate
 For the 5th Party/Respondent : M/s. L. Swaminathan, Advocates

For the 6th Party/Respondent : Ex-parte
 For the 7th Party/Respondent : M/s. L. Swaminathan, Advocates

S.No.	Industrial Dispute No.	Reference No.
1.	ID 23/2005	L-40011/25/2004-IR (DU) dated 19.01.2005
2.	ID 24/2005	L-40011/26/2004-IR (DU) dated 19.01.2005
3.	ID 26/2005	L-40011/28/2004-ID (DU) dated 19.01.2005

The Central Government, Ministry of Labour & Employment referred the IDs mentioned above to the Industrial Tribunal, Chennai for adjudication. The IDs were numbered as ID 23/2005, 24/2005 and 26/2005 respectively. In both IDs the parties have entered appearance through the counsel and filed claim and counter statement respectively.

The schedule mentioned in that order is:

ID 23/2005

“Whether the action of the management of Telecom Department, BSNL, Cuddalore in non-regularizing/absorbing the services of the contract labourers numbering 13 (list enclosed) is legal and justified and if not, to what relief the workmen/contract labourers are entitled to?”

ID 24/2005

“Whether the action of the management of Telecom Department, BSNL, Cuddalore in non-regularizing/absorbing the services of the contract labourers numbering 5 (list enclosed) is legal and justified and if not, to what relief the workmen/contract labourers are entitled to?”

ID 26/2005

“Whether the action of the management of Telecom Department, BSNL, Cuddalore is non regularizing/absorbing the services of the contract labourers numbering 6 (list enclosed) is legal and justified and if not, to what relief the workmen/contract labourers are entitled to?”

COMMON AWARD

3. On receipt of the Industrial Dispute this Tribunal numbered it as ID 23/2005, 24/2005 and 26/2005 respectively and issued notices to both sides. Both sides entered appearance through their counsel and filed Claim and Counter Statement respectively.

4. The averments in the Claim Statement filed by the petitioner in ID 23/2005 are as below:

The petitioner is a registered union having substantial number of permanent workmen working in BSNL as its members. The employees who are concerned in the dispute are doing the work of delivery of telegrams. They are working through the alleged Contractor. Even though the Contractors change the employees continue to remain the same. The very same work is carried out by the permanent employees of the Telecom Department. The work done by them is perennial in nature. The Contractor in most of the cases are one of the employees. All the workmen being Class-IV employees sponsorship from Employment Exchange is not required. The work performed by the employees are essential in nature. The so-called contract system is a sham one. The control of the employees remains with the Telecom Department. There are sanctioned posts for regularizing the employees concerned in the case. The Management has issued letter to all the circles in Metro Districts and Regions as to how regularization of the existing casual workers can be made. The workmen concerned are entitled to be absorbed in the service of the Respondents. The reference may be answered in favour of the workmen holding that they are entitled to regular absorption in the service of the Respondents with attendant benefits.

5. Respondents 1 and 2 have not filed any Counter Statement.

6. The Third Respondent has filed Counter Statement contending as below:

The petitioner has no locus-standi to espouse the cause of persons who are not employees of BSNL. The petitioner could raise dispute only in matters relating to the service conditions of the employees of BSNL. Previously the labourers listed in the annexure to the reference were engaged for telegram delivery works in Telegraph Offices under the control of the Third Respondent on individual work contract basis. From October 2004 onwards the telegram

delivery works are being carried out by engaging labour contractors. The concerned workers are not employees of BSNL. There is no employer-employee relationship between the concerned workers and the Respondents. For this reason also the dispute is not maintainable before this Tribunal. The details furnished by the workmen as found in the annexure to the schedule of reference are not correct. The case of the petitioner that the concerned workmen carry out work of permanent employees of Telecom Department, that the work is perennial in nature, that the Contractor in most of the cases are some of the employees etc. are also false. The Labour Ministry has permitted BSNL, Cuddalore to engage Contractors for house-keeping and allied works. Accordingly, the General Manager has engaged the service of a few private contractors to carry out telegram delivery and allied works in various telegraph offices under its control. Thus the workers are only contract labourers and not casual labourers. The Contractors engaged by BSNL are having license, ESI Code, PF Code, etc. The claim of the petitioner that the concerned workmen are entitled to permanency with BSNL as they have worked for more than 480 days within 24 calendar months is not correct. The petitioner is not entitled to any relief.

7. The Fourth Respondent has filed Counter Statement contending as below:

The Fourth Respondent had participated in the tender for house-keeping and allied contract works called by the Office of the General Manager, BSNL, Cuddalore in July 2004. Being the successful bidder the Fourth Respondent was allotted the house-keeping and allied contract work for the period from 15.10.2004 to 14.10.2005. The Fourth Respondent carried out the house-keeping work in the BSNL Offices in Cuddalore, Virudhachalam and Chidambaram on the basis of the above contract. The Fourth Respondent had engaged 7 contract labourers for carrying out the work. There is no direct contract between these workers and BSNL as claimed by the petitioner. These workers are not members of the Petitioner Union also. A suitable order may be passed in the circumstance.

8. The Fifth Respondent has filed Counter Statement contending as below:

The Fifth Respondent has participated in the tender for house-keeping and allied works coming under BSNL, Cuddalore during July 2004 and subsequently in March 2006 and has been the successful bidder. On the basis of the contract ten workers were engaged to do the work. The contract workers were engaged on daily rate basis and paid on monthly basis. They were not paid by the BSNL authorities. There was no direct contract between the said workers and BSNL, Cuddalore.

9. The workmen involved in ID 24/2005 are said to be doing house-keeping work. They have raised contentions similar to the workmen in ID 23/2005 and have claimed absorption in the service of the Respondents. The Respondents have filed Counter Statement denying the averments in the Claim Statement and raising contentions similar to that in ID 23/2005.

10. The workmen involved in ID 26/2005 are said to be doing cable work. They have also raised contentions similar to the workmen in ID 23/2005 and have claimed absorption in the service of the Respondents. The Respondents have filed Counter Statement denying the averments in the Claim Statement and raising contentions similar to that in ID 23/2005.

11. Initially BSNL officials only were in the party array and they were arrayed as Respondents 1 to 3 in the case. They have revealed the names of the so-called Contractors in the Counter Statement and it is on that basis the Claim Statement was amended impleading the different Contractors as Respondents 4 to 7.

12. All the above three cases have originated from Cuddalore Secondary Switching Area of BSNL. The petitioner in all the cases is the BSNL Employees Union. The workmen involved in all the cases are seeking absorption in the service of BSNL on the ground that they have been working for a long time with BSNL. So the three cases are tried jointly as agreed to by the parties. Common evidence was recorded in ID 23/2005.

13. The evidence consists of oral evidence of WWs 1 to 3 and MW1 and documents marked as Ext.W1 to Ext.W14 and Ext.M1 to Ext.M13.

14. **The points for consideration are:**

- (i) Whether the demand of the Petitioner for regularization of the concerned workmen involved in the different IDs are justified?
- (ii) What are the reliefs, if any, to which the concerned workmen are entitled?

The Points

15. The name and other details of 13 workmen involved in ID 23/2005 are given in the annexure to the schedule of reference in the ID. As seen from this some of the workmen concerned have started to work for the Department of Telecom even in the year 1991, 1992, etc. The nature of work done by the workmen is not given in the annexure. The Claim Statement states that all of them were doing the work of delivery of telegrams. The case is that though all of

them are working under the so-called Contractors they were directly paid by the Department itself and they were always under the control and supervision of the Officers of the Telecom Department. It is stated in the Claim Statement that the contract system under which they are working is a sham one. The petitioner has further stated that the workmen have completed 480 days of work in a period of 24 calendar months and are entitled to be conferred permanent status as per Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workman) Act. Thus it could be seen that the claim on behalf of the workmen are two-fold, one that they are entitled to permanency on account of the Tamil Nadu Act and two, that they are entitled to be absorbed in the service as the contract system if any under which they are working being sham.

16. One of the workman named in the annexure to the schedule of reference in ID 23 of 2005 has given evidence on behalf of himself and all other workmen involved in the ID. This witness has repeated the contentions raised in the Claim Statement in his Proof Affidavit. Ext.W1 to Ext.W7 were marked through this witness.

17. A few documents pertaining to WW1 himself are produced to prove his case. Ext.W1 is a letter from the Office of the In-Charge Telecom Centre, Tirukoilur to the Senior Superintendent of Telegraph Office, Villupuram. The letter requests that the persons named in the letter including WW1 may be considered to be taken as Coolie Messenger for delivery purpose. The letter is seen written on 22.08.1994. Ext.W2 is a communication dated 12.09.1996 stating that WW1 who is part-time Coolie Messenger of Telecom Centre, Tirukoilur is transferred to Chidambaram. Thus it is clear from Ext.W1 and Ext.W2 that WW1 was taken as a Coolie Messenger by the Telecom Department in 1994 and he was transferred in 1996. Ext.W3 is said to be details of duties performed by WW1 and some others. The name of WW1 is Mountpatten Prabhu with P as initial. Ext.W3 is a statement showing the duty hours performed by casual labourers for different months. The name P. Prabhu is also there. In all probability this is WW1 himself. The details available are for the period upto July 1996, though only of intermittent months. Ext.W4 is described as the Duty Chart of WW1 issued by JTO, Villupuram. This is of the period starting from February 1999 and is available upto September, 1999. Ext.W5 is said to be the acquittance roll of persons including WW1. This is of May 2000. After this no documents pertaining to WW1 are available.

18. The dispute might have been raised in 2002 or 2003. There is nothing to show that WW1 was working in the establishment at the time. During cross-examination WW1 has stated that now he is not working in the establishment at all. He further stated during his cross-examination that he worked there until 2005. However, nothing is available to show that he had done any work for the Telecom Department either directly or even through the Contractor after 1999. Even without considering the fact whether WW1 was there continuously and whether he had been in the establishment for 480 days continuously within 24 calendar months it could be stated that he would not be eligible for absorption. Absorption is only for those who continued to work even at the time when the dispute was raised. Other than the oral testimony of WW1 there is no other evidence to prove this. So his claim for absorption could not be entertained.

19. Some documents are produced in respect of some other workmen concerned in the case also. Ext.W1 refers to one Diamond Dhanasekaran as well. In Ext.W3 and Ext.W5 also his name is seen. But the lacunae I have referred to in respect of WW1 is there in his case as well. There is no evidence as to whether this individual is still working and if not to which time he has stopped working for the establishment. So he also is not entitled to any relief.

20. So far as the other persons named in the annexure to the schedule of reference are concerned no documents are available at all. Not even a single document is produced in respect of the 11 persons other than those already referred to. So there is no question of grant of any relief to them also.

21. Five workmen are involved in ID 24/2005. WW2 one of them has given evidence for herself and on behalf of all others. She has stated that one of the workman named in the annexure is not alive now and another one has ceased to be in service and she is giving evidence for herself and two others left. She has stated that all of them are discharging the work of house-keeping at Villupuram CTO and Telephone Exchange belonging to Cuddalore SSA. She has stated that they were paid salary directly by the JTO and instruction regarding work was given by the Telegraph Masters. They were receiving payment on monthly basis. She has further stated that all of them have completed 480 days of continuous service in a period of 24 calendar months and the Respondents should have conferred permanent status on them. She has also stated that the contract if any is a sham one. She has stated during her cross-examination that she is now working as Sweeper in the Telegraph Office at Cuddalore.

22. In spite of the tall claims made the only documents produced on behalf of WW2 is Ext.W8 described as the Log Book details for the period from November 1994 to February 2006. But unfortunately it does not show the name of WW2 at all. Though the description given to the document is as that of the period from 1994 to 1996, it contains different dates of various years. The document itself is not clear and nothing much could be made out of it. Not only that it does not show the name of WW2 but it does not show any name at all. Though there is a column for initial in most of the columns there are no initials even. It is not possible to decipher from the document if this is in respect of WW2 or some other person. There is no need to disbelieve the evidence given by WW2 that she is still working with

BSNL as a Sweeper. However, there is no evidence as to when she has started to work, whether she was working continuously, etc. So she is not eligible for any relief.

23. Ext.W9 is described as the Log Book details of Rukku, one of the concerned workman. However, this Log Book also has all the deformities applicable to Ext.W8. It could not be made out from this if this is in respect of Rukku. So she is also not eligible for any relief.

24. So far as the third workman named by WW2 is concerned no documents are produced at all. There is nothing to show if the person had been working in the establishment at the time when the dispute was raised or she is still there. So none of the workmen involved in ID 24/2005 are eligible for any relief.

25. Six persons are involved in ID 26/2005. The case is that they are doing cable work. WW3 has given evidence on behalf of the workmen involved in the case. He has stated that two of those named in the annexure to the schedule of reference are not interested in pursuing the case. His evidence is only on behalf of himself and the other three workmen. He has stated that himself and the other workmen concerned in the case are doing Cable Jointing Work at Neyveli Township of BSNL. According to him all of them are paid salary by Telecom Mechanic who is a permanent employee of the Department. This employee had been acting as a Maistry and supervising the work. This witness has also claimed that 480 days of continuous work in 24 calendar months having been completed they are eligible for absorption in the establishment.

26. Ext.W11 to Ext.W14 are produced through WW3. All these are diagrams said to be prepared for the period from March 2001 to May or August 2005 in respect of the different workmen concerned in the case. However, a perusal of these documents would not show that these were prepared by them. Even assuming that these are in respect of the workmen concerned these are mostly after the dispute was raised and some immediately before the dispute was raised. These are not of any help in proving the case of the concerned workmen.

27. In the absence of any acceptable evidence on the side of the petitioner in respect of the concerned workmen there is no necessity to consider the evidence given by MW1 or the documents marked through him. Even otherwise the claims of the petitioner could not be entertained. The petitioner is not entitled to relief in any of the cases.

In view of my discussion above, all the three references are answered against the petitioner. Awards are passed accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 22nd March, 2017)

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st Party/Petitioner Union : WW1, Sri. P. Mountpettan Prabhu
WW2, Sri P.R. Anjalakshi
WW3, Sh.V. Marimuthu

For the 2nd Party/Respondents : MW1, Sh. V.S. Ravi

Documents Marked:

On the petitioner's side

Ex.No.	Date	Description
Ext.W1	22.08.94	Letter of Telecom to Telegraph Department recommending applications of P. Mount Patten Prabhu and B. Diamond Dhanasekaran
Ext.W2	12.9.96	Letter of DOT transferring P. Mount Patten Prabhu to CTO, Chidambaram
Ext.W3	Feb' 94, Jan' 95 To Sep' 96	Details of duty performed by P. Mount Patten Prabhu and B. Diamond Dhanasekaran
Ext.W4	Feb'99 to Sept. '99	Duty Chart of P. Mount Patten Prabhu issued by JTO, CTO, Villupuram
Ext.W5	4.5.2000	Acquittance roll issued by A.O. (Cash), O/o. GM, Cuddalore, showing the names of P. Mount Prabhu and B. Diamond Dhanasekaran
Ex.W6	-	Telegram delivery messenger's receipt
Ex.W7	-	Annexure to 2K Petition

Ex.W8	Nov'94 to Feb'06	Log Book details of Anjalakshi
Ex.W9	Apr'01 to Sep'03	Log Book details of Rukku
Ex.W10	-	House Keeping
Ex.W11 Series	-	The copies of diagrams issued for the period March 2001 to August 2005 in respect of V. Marimuthu
Ex.W12 Series	-	The copies of diagrams issued for the period July 2001 to August 2005 in respect of P. Murugavel
Ex.W13 Series	-	The copies of diagrams issued for the period July 2001 to May 2005 in respect of S. Sakthivel
Ex.W14 Series	-	The copies of diagrams issued for the period July 2001 to August 2005 in respect of K. Thiruneelam

On the Management's side

Ext.No.	Date	Description
Ext.M1	18.11.2003	RLC Chennai Certificate to G.M., BSNL, Cuddalore
Ext.M2	11.03.2005	RLC Chennai Certificate to M/s. Muthu Security Services, Cuddalore
Ext.M3	11.10.2004	Agreement entered by M/s. Ex-servicemen Security, Intelligence Services & Labour Contractors, Pondy with G.M., BSNL, Cuddalore for supply of contract labourers
Ext.M4	11.10.2004	Agreement entered by M/s. Muthu Security Services Cuddalore with G.M., BSNL, Cuddalore for supply of contract labourers
Ext.M5	31.07.2004	Minutes of tender evaluation committee pertaining to Labour contract of G.M., BSNL, Cuddalore
Ext.M6	Nil	Details of EPF Account Number in r/o Labour Contractors, BSNL, Cuddalore
Ext.M7	12.10.2004	Approval of GM, BSNL, Cuddalore for engagement of labour contractors
Ext.M8	25.03.2006	Award of tender for contract labourers given by G.M., BSNL, Cuddalore
Ext.M9	28.10.2005	Award of Rehabilitation of External plant in Cuddalore SDCA
Ext.M10	19.09.2005	Approved cable contractor's agreement
Ext.M11	09.01.2001	Award of local cable laying contract to Sh. B. Aruljothi Natarajan, Vadalur
Ext.M12	06.02.2001	Award of cable jointing and related works in Cuddalore SSA to Sh. P. Singaram, Panruti
Ext.M13	12.06.2002	Approval of G.M., BSNL, Cuddalore to all Contractors regarding tender extension

नई दिल्ली, 25 अप्रैल, 2017

का.आ. 1125.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मुख्य महाप्रबंधक, बीएसएनएल, चेन्नई व अन्य एवं उनके कर्मचारी के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 44/2003, 45/2003, 46/2003, 48/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.04.2017 को प्राप्त हुआ था।

[सं. एल-40011/33/2002-आईआर (डीयू),
सं. एल-40011/34/2002-आईआर (डीयू),
सं. एल-40011/35/2002-आईआर (डीयू),
सं. एल-40011/38/2002-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 25th April, 2017

S.O. 1125.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Nos. 44/2003, 45/2003, 46/2003, 48/2003) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the industrial dispute between the employers in relation to the Chief General Manager, BSNL, Chennai and others and their workman, which was received by the Central Government on 03.04.2017.

[No. L-40011/33/2002-IR (DU),
No. L-40011/34/2002-IR (DU),
No. L-40011/35/2002-IR (DU),
No. L-40011/38/2002-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
CHENNAI**Wednesday, the 22nd March, 2017**Present :** K.P. PRASANNA KUMARI, Presiding Officer**Industrial Dispute No. 44, 45, 46 and 48 of 2003**

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Bharat Sanchar Nigam Ltd. & Two Others and their workman]

BETWEEN :

The Circle Secretary : 1st Party/Petitioner Union
BSNL Employees Union
No. 3/71, 4th Street, Raghava Nagar
Madipakkam
Chennai-600091

AND

1. The Chief General Manager : 2nd Party/1st Respondent
BSNL Tamilnadu Circle
Anna Salai
Chennai-600002
2. The Chairman & Managing Director : 2nd Party/2nd Respondent
BSNL, Sanchar Bhawan
New Delhi-110001
3. The General Manager, Telecom : 2nd Party/3rd Respondent
BSNL, Market Committee Building
Tolgate
Vellore-632001

Appearance:

For the 1st Party/Petitioner Union : M/s. K.M. Ramesh, Advocates
For the 2nd Party/Respondents : Sri P. Srinivasan, Advocate

S.No.	Industrial Dispute No.	Reference No.
1.	44 of 2003	L-40011/33/2002-IR (DU) dated 21.03.2003
2.	45 of 2003	L-40011/34/2002-IR (DU) dated 20.03.2003

3.	46 of 2003	L-40011/35/2002-IR (DU) dated 20.03.2003
4.	48 of 2003	L-40011/38/2002-IR (DU) dated 20.03.2003

COMMON AWARD

The Central Government, Ministry of Labour & Employment referred the IDs mentioned above to the Industrial Tribunal, Chennai for adjudication. The IDs were numbered as ID 44/2003, 45/2003, 46/2003 and 48/2003 respectively. In all the IDs the parties have entered appearance through the counsel and filed claim and counter statement respectively.

2. The schedule mentioned in the respective orders are:

ID 44/2003

“Whether the claim of BSNL Employees Union for absorption of the so-called contract labour continuously engaged by the management of BSNL, Vellore (as per Annexure) is legal and justified and if so to what relief the members of the Union are entitled to?”

ID 45/2003

“Whether the claim of BSNL Employees Union for absorption of the so-called contract labour continuously engaged by the management of BSNL, Vellore (as per Annexure) is legal and justified and if so to what relief the members of the Union are entitled to?”

ID 46/2003

“Whether the claim of BSNL Employees Union for absorption of the so-called contract labour continuously engaged by the management of BSNL, Vellore (as per Annexure) is legal and justified and if so to what relief the members of the Union are entitled to?”

ID 48/2003

“Whether the claim of BSNL Employees Union for absorption of the so-called contract labour continuously engaged by the management of BSNL, Vellore (as per Annexure) is legal and justified and if so to what relief the members of the Union are entitled to?”

3. The averments in the Claim Statement filed by the petitioner in ID 44 of 2003 are as below:

The petitioner is a Registered Trade Union having substantial number of permanent workmen working in BSNL as its members. The dispute is raised on behalf of workmen under Vellore SSA. They are doing Cable Work. These workmen are working directly under the control and supervision of BSNL. They are doing the very same work carried out by the permanent employees of the Department. The work done by them is perennial in nature. The workmen cannot be treated as contract labour but have to be treated as part and parcel of the regular service of the Department. All the workmen concerned in the dispute are Class-IV employees for which sponsorship from Employment Exchange is not required. The work performed by them are essential. The so-called contract system is a sham one. The overall control of the workmen including administrative control remained with the Department. The alleged Contractors are regular staff of the Department. They engage the workers, supervise the work, take their attendance and claim and pay their wages. There are regular sanctioned posts for regularizing the workmen concerned in the case. The BSNL is an establishment as per Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act. The concerned workmen having completed 480 days of work in a period of 24 calendar months should be made permanent. An Award may be passed holding that the workmen are entitled to regular absorption in the service of the establishment from the date of their joining, together with continuity of service and attendant benefits.

4. The Respondents have filed Counter Statement contending as below:

The petitioner has no locus-standi to espouse the cause of persons who are not employees of BSNL. The petitioner is not a recognized union. The subject-matter of the claim does not relate to the service conditions of any of the employees of BSNL. As such the claim is not maintainable. The Contractors have not been impleaded as parties. So the dispute is bad for non-joinder of necessary parties. It is not correct to state that the concerned workmen are doing work of the same nature as done by regular employees, that the work is perennial in nature, that there is direct control and supervision by the Respondents, that the Contractors are the Officers of BSNL, etc. Though the petitioner has admitted that the workmen are contract labourers they are described as casual labourers doing the work of Class-IV employees. These are mutually inconsistent pleas. In the case of contract labourers there is no supervision or control by the principal employers. The petitioner having admitted that the concerned workmen are contract labourers, the question of their absorption or regularization do not arise. The Respondents have not been prevented from engaging contract

labour. The Respondents do not know about the details of the concerned workmen. It is the Contractors who do the work and they only know about the details of their workmen. If the workmen have worked for more than 480 days they are to claim permanency with the Contractors and not with the Respondents. The petitioner is not entitled to any relief.

5. The same petitioner has raised the disputes involved in ID 45, 46 and 48 of 2003 as well. The workmen involved in ID 45/2003 are said to be doing Line Work. Those involved in ID 46 of 2003 are said to be working as Watchman and those involved in ID 48 of 2003 are said to be doing the work of Sweeping, Cleaning, etc. In all these IDs the Respondents have filed Counter Statement raising contentions similar to that in ID 44/2003.

6. The parties to the three IDs being the same and all the matters having arisen from Vellore SSA the four cases were tried jointly. Evidence is seen recorded in ID 45/2003.

7. The evidence consists of oral evidence of WWs 1 to 3 and MW1 and documents marked as Ext.W1 to Ext.W20 and Ext.M1 to Ext.M12

8. The points for consideration in all the IDs are:

- (i) Whether the demand of the Petitioner Union for absorption of the concerned workmen in the service of BSNL is legal and justified?
- (ii) What if any is the relief to which the concerned workmen are entitled?

The Points

9. As could be seen from the Claim Statements, the workmen on whose behalf the disputes are raised are doing Line Work, Cable Work, Cleaning and Sweeping Work and also the work of Watchman. The case of the Petitioner Union is that though the concerned workmen doing their respective jobs are termed as contract workmen they were actually under the control and supervision of the Telecom Department earlier, and under BSNL after it was formed. According to the petitioner the so-called contract system under which the workmen are working are all sham and nominal. It is stated in the Claim Statements that the Contractors are all regular employees of BSNL. It is also claimed by the petitioner that all the workmen involved in the four disputes have completed continuous service of 480 days and are entitled to permanent status.

10. The Union has examined two of the workmen as WW1 and WW2 to establish the case that all the workmen are entitled to absorption. WW3 is the Circle Treasurer of the Petitioner Union. His evidence is intended to prove that the Union has got locus-standi to raise the dispute. MW1, the Divisional Engineer (Administration) GMT, Vellore has been examined to prove the case of the Respondents that the petitioner has no locus-standi to raise the dispute and also to establish that direct engagement of workmen was banned in the establishment and the establishment was resorting to contract system only.

11. WW1 has stated in his Proof Affidavit that he is giving evidence on behalf of himself and other 25 workmen involved in ID 45/2003. Ext.W1 to Ext.W3 are marked through this witness. He has asserted the case in the Claim Statement that the contract system is a sham one and has also stated that all the workmen having completed 480 days of continuous service within 24 calendar months are entitled to permanent status with BSNL.

12. WW2 has given evidence on behalf of all the workmen involved in all the four disputes. He has referred to the nature of work done by the workmen concerned in each of the disputes. His Chief Affidavit is in tune with that of WW1 in other respects.

13. What are the documentary evidence available to prove the case? Under Ext.W1 a series of documents described as Delivery Receipts are available. These documents contain the details of the number of workmen sent out of Telegraph Office, the number of telegrams received, signature of the receiver and such other details. The details of each days transaction are found in these documents. Each volume under Ext.W1 is in respect of a particular year. The volume of 1999 starts from the date 05.12.1999. Details of transactions upto 29.12.1999 are available in this. The subsequent volumes are of the years from 2000 to 2006. In most of the volumes of the earlier period the name of the person who was engaged as Messenger is not given. In all this the Messenger is described as "Special Messenger No. 1". However, in the volume containing the details of 2003, in the later period WW1 is named as Special Messenger No. 1. In the volumes of 2005 and 2006 only the name of WW1 is given as the one who was engaged as Messenger. WW1 has claimed that all these volumes are regarding his engagement as Special Messenger. Though the initial volumes do not give the name of the Messenger it is clear from the description given to WW1 as Special Messenger No. 1 in the later volumes that he himself is the Messenger referred to as Special Messenger No. 1 in the earlier volumes as well. These documents would certainly show that WW1 has been working as Special Messenger at least from December, 1999. The case of WW1 during his cross-examination is that he has joined in the establishment on 01.07.1997. This is the date given in the annexure to the schedule of reference also as the date of joining. However,

documents are not available to show that he had been working as Special Messenger from July 1997. The documents show his presence as Special Messenger only from December 1999.

14. The case of all workmen including WW1 is that they have completed 480 days of continuous service in the establishment before the dispute was raised. When the delivery receipts of 2000 and 2001 are taken into account this claim of WW1 must probably be correct. However, the claim of permanent status on the basis of this in any case, could not be put forth by them against the Respondents as they have admitted in the Claim Statement itself that they were working under the contract system, though they have claimed that the contract is sham and nominal.

15. Now it is to be seen whether the case of WW1 that the contract being sham and nominal he is entitled to absorption could be entertained. The dispute itself is seen raised in early 2002. The failure report itself is dated 24.07.2002 as seen from the schedule of reference. As could be deciphered from the document WW1 has started to work in the establishment only in December, 1999. So he was there only for a period of two years. So it could not be stated that he was made to work in the establishment for a long time under the guise of a sham contract and therefore he is entitled to be absorbed. So the claim of absorption of WW1 on the basis that the contract is sham and nominal also could not be accepted.

16. WW2 has started to work in the establishment even as admitted by him only on 01.10.2000. It is unlikely that he would have completed 480 days of service before the dispute was raised. No documents are available at all to show employment of WW2 in the establishment either on contract basis or directly. The reason given in respect of WW1 for rejecting his claim for absorption on the basis that the contract is sham and nominal is applicable to this witness also.

17. Apart from the documents referred to in respect of WW1 some documents pertaining to other workmen are also marked through WW2. Ext.W2 includes several duty charts which are described as duty chart of Contract Messengers. However all these are of the period after the dispute was raised. Ext.W4 contains particulars of Watchman Duty, Line Work, etc. done by some workmen. However, these are of the year 2001 and 2002. Ext.W5 contains work particulars, but of 2002 after the dispute was raised. Ext.W6 contains documents described as Log Books, etc., the authenticity of which could not be verified, though the dates shown are of 1998 and 1999, etc. as well. These are in respect of different workmen. It could not be made out from this which worker had worked for how much period, etc. Ext.W11 is a letter by which Employment Exchange had sponsored workmen including one Gokulakrishnan. But this is of 1985. Ext.W13 is a certificate showing the number of days Gokulakrishnan had worked in each month of the years from 1984 to 1988. However, there is nothing to show that this workman is still in the establishment. No documents are available in this respect. The workman has not given evidence himself.

18. So far as the other workmen involved in the different IDs other than WW1 and WW2 are concerned no documents are available at all to show that they have been working in the establishment or that they are still working. None of them have come forward to give evidence. The claim on their behalf also is to be rejected.

In view of the above discussion all the IDs are answered against the petitioner. Awards are passed accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 22nd March, 2017)

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1 st Party/Petitioner Union	:	WW1, Sri K.P. Ragavan
		WW2, Sri K. Ganesan
		WW3, Sri K. Srinivasan
For the 2 nd Party/Respondents	:	MW1, Sri T.S. Manoharan

Documents Marked:

On the petitioner's side

Ex.No.	Date	Description
Ext.W1	-	Delivery Receipt Vol- I to VIII
Ext.W2 Series	-	Duty Chart I
Ext.W3	-	Annexure to 2(K) petition (I.D.No.45/2003)
Ext.W4	-	Line work particulars
Ext.W5	-	Work particulars

Ext.W6	-	Available Log Books
Ext.W7	-	Available Attendance Register
Ext.W8	-	No. of working days
Ext.W9	15.07.1999	Application form for Kaviarasu
Ext.W10	18.07.2002	Letter of Superintendent of Police to the S.D.E. (Telex)
	20.04.2002	-do-
	26.07.2002	-do-
	06.09.2002	-do-
	11.04.2003	-do-
	09.07.2003	-do-
Ext.W11	27.03.1985	Sponsor letter of the respondent
Ext.W12	-	Certificate of working particulars of Gokulakrishnan
Ext.W13	-	Certificate of working particulars of Gokulakrishnan
Ext.W14	-	Letter of the respondent
Ext.W15	-	Annexure to 2(K) petition (I.D.No.44/2003)
Ext.W16	-	Annexure to 2(K) petition (I.D.No.46/2003)
Ext.W17	-	Annexure to 2(K) petition (I.D.No.48/2003)
Ext.W18	-	Bye-laws of the Union
Ext.W19	30/31 Oct'2001	Resolution of the union
Ext.W20	21.03.2006	Lok Sabha Admitted Provisional Starred Question Dy. NO.10145 for 19.12.2005 by Shri Ganesh Singh regarding regularization of contract Workers.

On the Management's side

Ext.No.	Date	Description
Ext.M1	24.12.1992	Copy of DOT, New Delhi letter no. 29-18/91-SRT dated 24.12.1992 addressed to CGMR, Calcutta Phones and Endorsement No. E.1/107/Blgs/92-93/3 dated TR-1 the 02.02.1993
Ext.M2	30.03.1985	Office of the Director General Posts & Telegraphs regarding ban order for recruitment of casual labours.
Ext.M3	25.07.1989	Letter from Chief General Manager, Telecommunications, Tamil Nadu Circle, Madras-600002 regarding eligibility of casual labour to become office bearer of the Unions
Ext.M4	-	Copy of Page 137 of Appendix 3 from P&T Manual Vol.III
Ext.M5	-	Copy of Appendix No. 3 – Preservation of Records
Ext.M6	05.11.2001	Letter from BSNL to All Chief General Managers regarding adoption of the existing Appointing Authorities in respect of absorption of Group C and D staff in BSNL
Ext.M7	-	Copy of Appendix 13A at Page 426 of Financial & Hand Book of P&T Rules which deals with Rule-331
Ext.M8	-	Copy of letter from CGM, Telecom, Chennai to all Subordinate Offices
Ext.M9	19.02.2002	Copy of the agreement entered into between BSNL and M/s. M.R.S. Security and Maintenance, contractor
Ext.M10	25.02.2003	Certificate of Registration Contract Labour (Regulation and Abolition) Act,1970 and Central Rules,1971-Grant-reg

Ext.M11	22.06.1995	Copy of the document of prescribed procedure to be followed by the Department in the appointment of Group “D” employees category.
Ext.M12	03.02.2003	Model Bill.

नई दिल्ली, 25 अप्रैल, 2017

का.आ. 1126.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार प्रबंधक निदेशक, मैसर्स जीजे सिक्योरिटी गार्ड सर्विसेज, सलेम व अन्य एवं उनके कर्मचारी के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 79/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17.04.2017 को प्राप्त हुआ था।

[सं. एल-42012/90/2015-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 25th April, 2017

S.O. 1126.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 79/2015) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in Annexure, in the industrial dispute between the employers in relation to the Managing Director, M/s. GJ Security Guard Services, Salem and others and their workman, which was received by the Central Government on 17.04.2017.

[No. L-42012/90/2015-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Thursday, the 6th April, 2017

Present : K.P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 79/2015

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of M/s. GJ Security Guard Services and Another and their workman)

BETWEEN :

Sri A. Antony Gurusu : 1st Party/Petitioner

AND

1. The Managing Director : 2nd Party/1st Respondent
M/s. GJ Security Guard Services
Salem-636010

2. The Toll Manager
M/s SU Toll Plaza Pvt. Ltd.
Kallakurichi Taluk
Villupuram-606202

Appearance :

For the 1st Party/Petitioner : Sri C. Munisamy, Advocate

For the 2nd Party/1st Management : Sri D. Arun, Advocates

For the 2nd Party/2nd Management : Smt. R. Maheshwari, Advocates

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-42012/90/2015-IR (DU) dated 26.05.2015 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

“Whether the action of the management of M/s SU Toll Road (P) Ltd. in directing the Contractor to dispense with the services of Sri A. Antony without any enquiry is legal and justified? If not, to what relief the workman is entitled?”

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 79/2015 and issued notices to both sides. Both sides have entered appearance through their counsel and have filed Claim and Counter Statement respectively.

3. The averments in the Claim Statement filed by the petitioner in brief are these:

The petitioner who is an Ex-Serviceman joined the service of the First Respondent as Gunman on 01.06.2012 and was drawing salary of Rs. 12,100/- a month. The First Respondent did not pay salary for certain periods to the petitioner and other 18 employees forcing them to agitate in the premises of the Second Respondent on 13.08.2014. Thereafter, the Second Respondent who is the principal employer has paid salary. The First Respondent terminated the service of the petitioner on 21.08.2014 without issuing any Charge Memo or conducting any enquiry. The action of the First Respondent is arbitrary and illegal. The petitioner has not committed any misconduct during the course of employment. The petitioner had valid gun license till 15.07.2015. The order of the First Respondent terminating the petitioner from service is liable to be set aside. An order may be passed reinstating the petitioner in service with backwages, continuity of service and other benefits.

4. The First Respondent has filed Counter Statement contending as below:

The First Respondent entered into service level agreement with the Second Respondent only on 01.12.2013. Only after this the petitioner came to be introduced to the petitioner, though he was working for the Second Respondent even earlier. The allegation regarding non-payment of salary can be raised only against the Second Respondent. The First Respondent is only acting as the agency of the Second Respondent and salary entrusted with the First Respondent by the Second Respondent will be paid to the petitioner and other employees. The allegation that the petitioner was terminated from service without enquiry in violation of principles of natural justice could not be raised against the First Respondent. The Second Respondent who has appointed the petitioner as Gunman for the Toll Plaza has directed the First Respondent to issue an order discharging the petitioner from service as he did not possess valid Gun License to be used for security of the Toll Plaza. The petitioner was discharged from service accordingly. The First Respondent has no relationship as employer with the petitioner so as bring him within the meaning of Section-2(k) of the Industrial Disputes Act. The service level agreement between the First and Second Respondents expired on 30.11.2014. Subsequently the Second Respondent has entered into a new agreement with another Company. Now the First Respondent has no connection with the Second Respondent.

5. The Second Respondent has filed Counter Statement contending as below:

The Second Respondent had engaged the service of the First Respondent and had entered into a service level agreement with it on 01.12.2013 for a period of 12 months only. As per the agreement the First Respondent is to engage Security Guards and Gunmen at Toll Plazas of the Second Respondent. The petitioner is one who was deputed as Gunman at the Second Respondent's Toll Plaza. The agreement expired on 30.11.2013. Thereafter the Second Respondent had entered into a fresh agreement with one M/s Frontline (NCR) Business Solutions Pvt. Ltd. for a period of one year from 01.10.2015. The Second Respondent did not give any direction to the First Respondent for terminating the service of the petitioner. It is informed by the First Respondent that the petitioner was directed to register his Gun License with the Collectorate of Villupuram District. This was not done by the petitioner. It is incorrect to state that the petitioner was having valid Gun License. His license was last renewed in Srinagar in Jammu & Kashmir. The petitioner should have reported about the possession of the Gun and License details to the Police Authorities of the State. Since the petitioner could not get permission from the State Authorities for using the Gun in the State of Tamil Nadu the First Respondent was right in removing him from service. The petitioner was employees of the First Respondent and not of the Second Respondent. The petitioner is not entitled to any relief.

6. The evidence in the case consists of oral evidence of WW1 and MW1 and documents marked as Ext.W1 to Ext.W7 and Ext.M1 to Ext.M3.

7. **The points for consideration are:**

- (i) Whether the action of the Second Respondent in directing the First Respondent to terminate the service of the petitioner, if any is justified?

- (ii) What, if any is the relief to which the petitioner is entitled?

The Points

8. The petitioner, an Ex-Serviceman was working as Gunman for the Second Respondent as engaged by the First Respondent on the basis of the service agreement entered into between the Respondents. The agreement had started on 01.12.2013 and had come to an end after a year. According to the petitioner he was terminated from service by the First Respondent without any notice or notice salary. It is stated by the petitioner that the termination is illegal.

9. The stand of the First Respondent is that the petitioner was terminated from service as directed by the Second Respondent as he did not have valid license to use the Gun in connection with his job as Gunman. According to the Second Respondent it has nothing to do with the termination of the petitioner from service. It is contended by the Second Respondent that there was no employer-employee relationship between it and the petitioner.

10. The petitioner has given evidence as WW1 reiterating his case in the Claim Statement. MW1 is the Toll Manager of the Second Respondent. She has asserted the case of the Second Respondent in the Proof Affidavit filed by her.

11. It is apparent from the admission made by the petitioner as well as the documents that there was no employer-employee relationship between the petitioner and the Second Respondent. Even in the Claim Statement the petitioner has stated that the Second Respondent is only the principal employer. According to him when there was failure on the part of the First Respondent to pay salary to him and other workmen at the toll Plaza, the Second Respondent had made payment consequent to an agitation by them. Ext.M2 is the Service Level Agreement entered into between Respondents 1 and 2 on 01.12.2013. At the time of termination of service the petitioner was working for the Second Respondent as engaged by the First Respondent on the basis of Ext.M2. During cross-examination also the petitioner has admitted that he has joined the Office of the First Respondent, as engaged by R1. Though according to the petitioner he had started to work on 01.06.2012, there is nothing to show that his engagement during the period before Ext.M2 was by the First Respondent. According to the First Respondent even earlier he was working there by he started to work for the First Respondent after Ext.M2. It is clear that at the time of termination the petitioner had been the employee of the First Respondent and the Second Respondent was only the principal employer. So the Second Respondent could not have any liability in the event of any illegal termination of the petitioner from service.

12. The petitioner has stated that he was terminated from service in violation of all legal norms. He has stated that it was not after issuing of Charge Sheet or conduct of domestic enquiry that he was terminated from service.

13. Even as admitted by the First Respondent it had issued the order of termination on the petitioner. Ext.W3 is this order produced by the petitioner. In the Counter Statements of both Respondents the case that is put forth is that the petitioner did not have a valid Gun License to work as Gunman and this is the reason for terminating him from service. According to the First Respondent, the Second Respondent had informed it of the absence of the license of the petitioner and had instructed to terminate him. However, Ext.W1 shows that the Gun License of the petitioner was extended to 15.01.2015 by the District Magistrate of Srinagar who issued the license originally. So it is very clear that he was having license at the time of termination from service. The case that is now put forth is that the Gun was not registered with the authorities of Tamil Nadu and this disabled him from using the Gun at all and his employment as Gunman could not have been continued. However, the fact remains that it was with the knowledge of this defect, if any in the Gun License of the petitioner he was taken as employee by the First Respondent and even earlier.

14. It could be seen from Ext.W3 that termination of the petitioner from service was not for the reason now claimed by the Respondents. Ext.W3 states that the petitioner has now informed the First Respondent about the intended strike of 13.08.2014 and that the petitioner has given wrong information to the press, media, police, etc. and that he is the only person responsible for the strike that was conducted at the premises on 13.08.2014. In the Claim Statement and also in evidence the petitioner has stated about the agitation consequent to the non-payment of salary for a particular period. It is to be assumed that the First Respondent or both Respondents were displeased, enraged because of the strike resulting in termination of the petitioner from service. The strike was on 13.08.2014 and the petitioner was terminated from service on 21.08.2014.

15. The termination of the petitioner is apparently in proper disregard to Section-25(F) of the Industrial Disputes Act. The petitioner has stated that he was not given any notice, salary or compensation before termination. If termination was for the reason given in Ext.W3 i.e. for conducting illegal strike, the First Respondent should have issued a Charge Memo and enquiry should have been conducted also. The termination is without resorting to any of these.

16. The claim of the petitioner is that he is entitled to be reinstated in service. However, the circumstances do not entitle the petitioner for such a relief. Even as admitted by the petitioner Ext.M2 agreement had expired on 30.11.2014. The petitioner had admitted during cross-examination that after expiry of Ext.M2 the second Respondent had entered into contract for security with another establishment. The engagement of the petitioner for the Second Respondent by the First Respondent could have lasted only so long as the Service Agreement between the Respondents lasted. So

reinstatement is not a proper remedy. The Apex Court has repeatedly stated that in all cases where is violation of Section-25f of Industrial Disputes Act reinstatement need not be ordered. In appropriate cases compensation will be sufficient remedy. This is a fit case to do so. The petitioner was not given notice or notice in lieu of salary as provided under Section-25(F)(a) of the ID Act. He was not paid any compensation as provided under Section-25(F)(b) of the Act also. The petitioner has started to work for the Second Respondent in June 2012. However, the First Respondent had started to engage him only after Ext.M2 which was executed in December 2013. So the petitioner was under the employment of the First Respondent only for less than a year. Considering these aspects compensation due to the petitioner is fixed as Rs. 25,000/-.

In view of the above discussion, an Award is passed as below:

The First Respondent shall pay the petitioner Rs. 25,000/- as compensation within two months of the publication of the Award. The amount will carry interest at the rate of 7.5% per annum from the date of the Award, in case of default.

The reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this date the 6th April, 2017)

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st Party/Petitioner : WW1, A. Antony Gurusu
 For the 2nd Party/1st Management : None
 For the 2nd Party/2nd Management : MW1, U. Kishore Kumar

Documents Marked:

On the petitioner's side

Ext.No.	Date	Description
Ext.W1	15.07.2012	Gun License issued to the petitioner
Ext.W2	12.08.2014	Representation
Ext.W3	21.08.2014	Discharge Order
Ext.W4	30.03.2015	Conciliation failure report
Ext.W5	20.04.2015	Representation of the petitioner with acknowledgement
Ext.W6	26.05.2015	Order passed by the Ministry of Labour
Ext.W7	2015	News Paper Report

On the Management's side

Ext.No.	Date	Description
Ext.M1	13.01.2012	Ministry of Road Transport and Highways Notification
Ext.M2	01.12.2013	Service Level Agreement entered between 1 st & 2 nd Respondents
Ext.M3	03.01.2015	Work Order given by the 2 nd Respondent to M/s Frontline NCR Business Solutions.

नई दिल्ली, 25 अप्रैल, 2017

का.आ. 1127.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार महाप्रबंधक, दूरसंचार, बीएसएनएल, ईरोड व अन्य एवं उनके कर्मचारी के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 294/2004, 295/2004, 296/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.04.2017 को प्राप्त हुआ था।

[सं. एल-40011/21/2003-आईआर (डीयू),

सं. एल-40011/22/2003-आईआर (डीयू),

सं. एल-40011/23/2003-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 25th April, 2017

S.O. 1127.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Nos. 294/2004, 295/2004, 296/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in Annexure, in the industrial dispute between the employers in relation to the General Manager, Telecom, BSNL, Erode and others and their workman, which was received by the Central Government on 03.04.2017.

[No. L-40011/21/2003-IR (DU),
No. L-40011/22/2003-IR (DU),
No. L-40011/23/2003-IR (DU)]
RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 22nd March, 2017

Present : K. P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 294, 295 and 296 of 2004

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Bharat Sanchar Nigam Ltd. and Another and their workman)

BETWEEN :

The Circle Secretary : 1st Party/Petitioner Union
BSNL Employees Union
No. 21/10, R.K. Srinivas Apartments
Bharathiyar 1st Street
Pazhavanthangal
Chennai-600114

AND

1. The General Manager : 2nd Party/1st Respondent
BSNL, Erode SSA,
Gandhi Road
Erode-639001
2. The Chief General Manager : 2nd Party/2nd Respondent
BSNL Tamilnadu Circle
Anna Salai
Chennai-600002

Appearance:

For the 1st Party/Petitioner Union : M/s. K.M. Ramesh, Advocates
For the 2nd Party/1st & 2nd Respondents : Sri D. Simon, Advocate

S.No.	Industrial Dispute No.	Reference No.
1.	294 of 2004	L-40011/21/2003-IR (DU) dated 19.01.2004
2.	295 of 2004	L-40011/22/2003-IR (DU) dated 19.01.2004
3.	296 of 2004	L-40011/23/2003-IR (DU) dated 19.01.2004

COMMON AWARD

The Central Government, Ministry of Labour & Employment referred the IDs mentioned above to the Industrial Tribunal, Chennai for adjudication. The IDs were numbered as ID 294, 295 and 296 of 2004 respectively. In all IDs the parties have entered appearance through the counsel and filed claim and counter statement respectively.

The schedule mentioned in the reference are:

ID 294/2004

Whether the demand of the Union for absorption of 67 workers (list enclosed) engaged through Contractors by the General Manager, BSNL, Erode to do cable work is justified? If not, to what relief they are entitled to?"

ID 295/2004

Whether the demand of the Union for absorption of 54 workers (list enclosed) engaged through Contractors by the General Manager, BSNL, Erode to do line work is justified? If not, to what relief they are entitled to?"

ID 296/2004

Whether the demand of the Union for absorption of 4 workers (list enclosed) engaged through Contractors by the General Manager, BSNL, Erode to do telegraph office work is justified? If not to what relief they are entitled to?"

4. The averments in the Claim Statement filed by the petitioner in ID 294/2004 are as below:

The petitioner is a Registered Trade Union having substantial number of permanent workmen working in BSNL as its members. The dispute is raised on behalf of workmen working in the Office of BSNL, Erode, SSA. They are doing Cable Work. These workmen are working directly under the control and supervision of BSNL. They are doing the very same work carried out by the permanent employees of the Department. The work done by them is perennial in nature. The workmen cannot be treated as contract labour but have to be treated as part and parcel of the regular service of the Department. All the workmen concerned in the dispute are Class-IV employees for which sponsorship from Employment Exchange is not required. The work performed by them are essential. The so-called contract system is a sham one. The overall control of the workmen including administrative control remained with the Department. The alleged Contractors are regular staff of the Department. They engage the workers, supervise the work, take their attendance and claim and pay their wages. There are regular sanctioned posts for regularizing the workmen concerned in the case. The BSNL is an establishment as per Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act. The concerned workmen having completed 480 days of work in a period of 24 calendar months should be made permanent. An Award may be passed holding that the workmen are entitled to regular absorption in the service of the establishment from the date of their joining together with continuity of service and attendant benefits.

4. The Respondent has filed Counter Statement contending as below:

The petitioner has no locus-standi to espouse the cause of persons who are not employees of BSNL. The petitioner is not a recognized union. The subject matter of the claim does not relate to the service conditions of any of the employees of BSNL. As such the claim is not maintainable. The Contractors have not been impleaded as parties. So the dispute is bad for non-joinder of necessary parties. It is not correct to state that the concerned workmen are doing work of the same nature as done by regular employees, that the work is perennial in nature, that there is direct control and supervision by the Respondents, that the Contractors are the Officers of BSNL, etc. Though the petitioner has admitted that the workmen are contract labourers they are described as casual labourers doing the work of Class-IV employees. These are mutually inconsistent pleas. In the case of contract labourers there is no supervision or control by the principal employers. The petitioner having admitted that the concerned workmen are contract labourers, the question of their absorption or regularization do not arise. The Respondents have not been prevented from engaging contract labour. The Respondents do not know about the details of the concerned workmen. It is the Contractors who do the work and they only know about the details of their workmen. If the workmen have worked for more than 480 days they are to claim permanency with the Contractors and not with the Respondents. The petitioner is not entitled to any relief.

5. The workmen in ID 295/2004 are doing Line Work. The petitioner has filed Claim Statement on their behalf raising contentions similar to that in ID 294/2004 and has claimed absorption of these workmen. The Respondents have filed Counter Statement in this similar to that in ID 294/2004.

6. The workmen involved in ID 296/2004 are said to be working in the Telecom Centre at Erode. Contentions similar to that in other two IDs are raised in this Claim Statement also. Absorption of the concerned workmen

is claimed by the petitioner. The contentions raised by the Respondents in the Counter Statement are similar to those in the other two IDs.

7. The three IDs were tried jointly, all of them having generated from Erode SSA and the petitioner and the Respondents being the same. Evidence was recorded in ID 294/2004 treating it as the main case.

8. The evidence consists of oral evidence of WW1, WW2 and MW1 and documents marked as Ext.W1 to Ext.W7 and Ext.M1 to Ext.M12.

8. **The point to be considered in all the IDs are:**

Whether the claim for absorption of the concerned workmen is justified?

The Point

9. The dispute in ID 294/2004 is raised by the Petitioner Union on behalf of 67 workers whose names and other details are given in the annexure to the schedule of reference. ID 295/2004 is on behalf of 54 workmen whose names and other details are given in the annexure to the schedule of reference to the said ID. ID 295/2004 is on behalf of 4 workers whose names and other details are given in the annexure to its schedule of reference. The Petitioner Union has claimed that the workmen involved in all the IDs are entitled to be absorbed in BSNL. According to the petitioner, the contract system under which the workmen are working are sham. They were all directly under the control and supervision of Telecom Department initially and subsequently under the Respondents.

10. WW1 is examined on behalf of the workmen concerned in all the IDs. He has stated in the Proof Affidavit filed by him that the workmen were employed in the different exchanges under Erode Telecom SSA. All of them were working even prior to the formation of BSNL under the Department of Telecom. They were paid wages sometimes weekly, sometimes fortnightly and sometimes monthly, by wage receipts. He has stated that all of them have completed 480 days of continuous service within a period of 24 calendar months. He has claimed that all of them should have been conferred permanent status on account of this itself. He has further stated in the affidavit that the contract system under which they were working are sham and all of them were under the direct control and supervision of the Department of Telecom and thereafter BSNL. WW1 has also given the names of officials who are said to have extracted work from them, in his affidavit.

11. The only documents which are relevant to substantiate the claim are Ext.W1, the original of which is subsequently marked as Ext.W4 and also Ext.W2. The other documents are annexure to the schedule of reference and bye-laws and resolution of the Union.

12. Ext.W4 is the document which is described as Personnel Record of Employment on Muster Roll. This document pertains to WW1. His registration number in Employment Exchange is also given in the first page of document. The date of selection of the employee is given as 23.07.1981. The Sub-Divisional Office, Telegraph, Udumulapet is shown as the office sponsoring the workman. The subsequent pages contain details of the work done by WW1 and the period during which work was done. It shows the different periods starting from 1981 and the details of work done upto 1985 are available in this. The document contains the signature of some or other officials of the Respondents at every column. There is no case for the Respondents that this is not a genuine document. Of course, no documents for the period subsequent to 1985 are seen produced on behalf of WW1. However, there is evidence given by WW1 that he was still working as Cable Jointer when he was examined in 2005. That he is still working also is not disputed. The only case of the Respondents is that the work is done on contract basis. WW1 has stated during his cross-examination that he used to make endorsement in the Muster Roll and at the end of the month the Officer would calculate the number of days worked and pay wages. Till 1986 they were signing Muster roll itself for receiving wages. After that they were signing ACG-17 receipts. He has also stated that though he continued to do the same work, after 1986 the Respondents have created a contract system. Ext.W2 consists of two letters from two different Telecom Mechanics addressing the JTO Phones, Perundurai asking whether he can issue a certificate to casual labourers engaged in cable work including WW1. However, the authenticity of these letters could not be vouchsafed as these do not contain any seal.

13. In any case it is clear from Ext.W4 that WW1 had started to work for the Respondents as early as in 1981. It is also clear that he has continued to work for the Respondents though subsequently a contract system was introduced and he continued even after the dispute was raised.

14. The total number of workers involved in the three cases come to 125. However, WW1 alone was examined in the case. Apart from that other than Ext.W4 which is only in respect of WW1, no other documents are produced to show on which date the other workmen have started to work, whether they have been continuously working in the establishment, whether they are still working, etc. In the absence of any acceptable evidence the case on behalf of workmen other than WW1 has to be rejected.

15. The counsel for the Respondents have referred to the decision of the Apex Court in Uma Devi's case reported in 2006 4 SCC 1 where it was held that there cannot be regularization of the workmen as they were engaged without following due process of selection as envisaged in constitutional scheme. However, the dictum laid down in the Uma Devi's Case has been subsequently explained in the case MAHARASHTRA STATE ROAD TRANSPORT CORPORATION VS. CASTERIBE RAJYA PARIVAHAN KARMACHARI SANGHATANA reported in 2009 2 SCC (L&S) 513. It has been held in the above decision that the powers of the Industrial and Labour Courts were not under consideration in Uma Devi case and issues like one pertaining to unfair labour case was not at all referred to, considered or decided in Uma Devi case. Unfair labour practice on the part of the employer in engaging them as Badlis, casuals or temporaries and to continue them as such for years with the object of depriving them of the status and privilege of permanent employees as provided in Item-6 of Schedule IV and the power of Industrial and Labour Courts under Section-30 of the Act did not fall for adjudication or consideration before the Constitution Bench in Uma Devi's case, it was held. It was also held that Uma Devi does not denude the Industrial and Labour Courts of the statutory power to order permanency of the workers who have been victims of unfair labour practice on the part of the employer.

16. When considered in the light of the above dictum it is very much clear WW1 has been made to work under different Contractors for several years for low wages depriving him of the status and privilege of permanent employee. It is certainly unfair labour practice on the part of the employer. The contract if any under which WW1 worked has to be treated as sham and nominal.

17. MW1 has stated that Ext.M1 is the notification which would show that BSNL Employees Union is given recognition only to represent the matters of its own members. According to the Respondent the Petitioner Union has no locus-standi to raise the dispute. WW2, an official of the Union has been examined to meet this case. Ext.W5 the bye-laws of the Union and Ext.W6 the resolution passed by the Union on 30th and 31st October, 2001 are marked through this witness. WW2 has stated that as per the bye-laws of the Union it is entitled to espouse the cause of BSNL employees in general. Apart from that it has decided to espouse the cause of all workmen who had not been regularized, by Ext.W6 resolution. So the contention that the Union is not competent to espouse the cause of the workmen will not hold good.

In view of the above discussion WW1 is entitled to be absorbed in the establishment as regular workman. According an Award is passed as below:

WW1, S.No. 66 in ID 294/2004 shall be deemed to have been absorbed in the service of the Respondents in the then position with effect from the date on which the dispute was raised. WW1 shall be entitled to the difference in the pay consequent to such absorption. The amount is payable to him within 2 months from the date of the publication of the Award. In default he is entitled to interest @ 6% per annum on the amount from the date of the Award.

ID 295/2004 and ID 296/2004 are answered against the petitioner.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 22nd March, 2017)

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st Party/Petitioner Union : WW1, Sri S. Kumaresan
WW2, Sri K. Srinivasan
For the 2nd Party/Respondents : MW1, Sri V. Ponnusamy

Documents Marked:

On the petitioner's side

Ex.No.	Date	Description
Ext.W1	-	Muster Roll
Ext.W2	28.07.2004	Letter of the respondent
Ext.W3 Series	-	Annexure to 2(K) petition
Ext.W4	-	Muster Roll
Ext.W5	-	Bye-laws of the Union
Ext.W6	30/31 Oct'2001	Resolution of the union

Ext.W7 21.03.2006 Lok Sabha Admitted Provisional Starred Question Dy. NO.10145 for 19.12.2005 by Shri Ganesh Singh regarding regularization of contract Workers.

On the Management's side

Ext.No.	Date	Description
Ext.M1	24.12.1992	Copy of DOT, New Delhi letter no. 29-18/91-SRT dated 24.12.1992 addressed to CGMR, Calcutta Phones and Endorsement No. E.1/107/Blgs/92-93/3 dated TR-1 the 02.02.1993
Ext.M2	30.03.1985	Office of the Director General Posts & Telegraphs regarding ban order for recruitment of casual labours.
Ext.M3	25.07.1989	Letter from Chief General Manager, Telecommunications, Tamil Nadu Circle, Madras-600002 regarding eligibility of casual labour to become office bearer of the Unions
Ext.M4	-	Copy of Page 137 of Appendix 3 from P&T Manual Vol.III
Ext.M5	-	Copy of Appendix No. 3 – Preservation of Records
Ext.M6	05.11.2001	Letter from BSNL to All Chief General Managers regarding adoption of the existing Appointing Authorities in respect of absorption of Group C and D staff in BSNL
Ext.M7	-	Copy of Appendix 13A at Page 426 of Financial & Hand Book of P&T Rules which deals with Rule-331
Ext.M8	-	Copy of letter from CGM, Telecom, Chennai to all Subordinate Offices
Ext.M9	28.03.2005	Agreement for executing House keeping work as specie in the Tender notice No.G.28/HK-Tender/GMO, Erode/2005-2006
Ext.M10	20.12.2002	Certificate of Registration Form-II)See Rule-18 (1)
Ext.M11	14.07.2005	Certificate of Registration Contract Labour (Regulation and Abolition) Act,1970 and Central Rules,1971-Grant-reg
Ext.M12	22.06.1995	Copy of the document of prescribed procedure to be followed by the Department in the appointment of Group "D" employees category.

नई दिल्ली, 25 अप्रैल, 2017

का.आ. 1128.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मुख्य महाप्रबंधक, दूरसंचार, चेन्नई टेलीफोन, बीएसएनएल, चेन्नई व अन्य एवं उनके कर्मचारी के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 300/2004, 301/2004, 302/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.04.2017 को प्राप्त हुआ था।

[सं. एल-40011/19/2003-आईआर (डीयू),

सं. एल-40011/18/2003-आईआर (डीयू),

सं. एल-40011/17/2003-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 25th April, 2017

S.O. 1128.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Nos. 300/2004, 301/2004, 302/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in Annexure, in the industrial dispute between the employers in relation to the Chief General Manager, Telecom, Chennai Telephones, BSNL, Chennai and others and their workman, which was received by the Central Government on 03.04.2017.

[No. L-40011/19/2003-IR (DU),

No. L-40011/18/2003-IR (DU),

No. L-40011/17/2003-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
CHENNAI**Wednesday, the 22nd March, 2017**Present : K. P. PRASANNA KUMARI**, Presiding Officer**Industrial Dispute No. 300, 301 and 302 of 2004**

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Bharat Sanchar Nigam Ltd. and two Others and their workman)

BETWEEN :

The Circle Secretary : 1st Party/Petitioner Union
BSNL Employees Union
No. 21/10, R.K. Srinivas Apartments
Bharathiyar 1st Street
Pazhavanthangal
Chennai-600114

AND

1. The Chief General Manager, Telecom : 2nd Party/1st Respondent
Chennai Telephones, BSNL,
89 Millers Road
Chennai-600010
2. The General Manager : 2nd Party/2nd Respondent
BSNL, 15-C, Bypass Road
Dharmapuri-636701

Appearance:

For the 1st Party/Petitioner Union : M/s. K.M. Ramesh, Advocates
For the 2nd Party/Respondents : Sri P. Srinivasan, Advocate

S.No.	Industrial Dispute No.	Reference No.
1.	300/2004	L-40011/19/2003-IR (DU) dated 29.01.2004
2.	301/2004	L-40011/18/2003-IR (DU) dated 29.01.2004
3.	302/2004	L-40011/17/2003-IR (DU) dated 29.01.2004

COMMON AWARD

The Central Government, Ministry of Labour & Employment referred the IDs mentioned above to the Industrial Tribunal, Chennai for adjudication. The IDs were numbered as ID 300, 301 and 302 of 2004 respectively. In both IDs the parties have entered appearance through the counsel and filed claim and counter statement respectively.

The schedules mentioned are:

ID 300/2004

“Whether the demand of the Union for absorption of 20 workers (list enclosed) engaged through Contractors by the General Manager, BSNL, Dharmapuri to do cable work is justified? If not, to what relief they are entitled to?”

ID 301/2004

“Whether the demand of the Union for absorption of 45 workers (list enclosed) engaged through Contractors by the General Manager, BSNL, Dharmapuri to do Housekeeping work is justified? If not, to what relief they are entitled to?”

ID 302/2004

“Whether the demand of the Union for absorption of 43 workers (list enclosed) engaged through Contractors by the General Manager, BSNL, Dharmapuri to do Line Work is justified? If not, to what relief they are entitled to?”

3. The averments in the Claim Statement filed by the petitioner in ID 300/2004 are as below:

The petitioner is a Registered Trade Union having substantial number of permanent workmen working in BSNL as its members. The dispute is raised on behalf of workmen working in the Office of BSNL, Dharmapuri SSA. They are doing Cable Work. These workmen are working directly under the control and supervision of BSNL. They are doing the very same work carried out by the permanent employees of the Department. The work done by them is perennial in nature. The workmen cannot be treated as contract labour but have to be treated as part and parcel of the regular service of the Department. All the workmen concerned in the dispute are Class-IV employees for which sponsorship from Employment Exchange is not required. The work performed by them are essential. The so-called contract system is a sham one. The overall control of the workmen including administrative control remained with the Department. The alleged Contractors are regular staff of the Department. They engage the workers, supervise the work, take their attendance and claim and pay their wages. There are regular sanctioned posts for regularizing the workmen concerned in the case. The BSNL is an establishment as per Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act. The concerned workmen having completed 480 days of work in a period of 24 calendar months should be made permanent. An Award may be passed holding that the workmen are entitled to regular absorption in the service of the establishment from the date of their joining together with continuity of service and attendant benefits.

4. The Respondents have filed Counter Statement contending as below:

The petitioner has no locus-standi to espouse the cause of persons who are not employees of BSNL. The petitioner is not a recognized union. The subject matter of the claim does not relate to the service conditions of any of the employees of BSNL. As such the claim is not maintainable. The Contractors have not been impleaded as parties. So the dispute is bad for non-joinder of necessary parties. It is not correct to state that the concerned workmen are doing work of the same nature as done by regular employees, that the work is perennial in nature, that there is direct control and supervision by the Respondents, that the Contractors are the Officers of BSNL, etc. Though the petitioner has admitted that the workmen are contract labourers they are described as casual labourers doing the work of Class-IV employees. These are mutually inconsistent pleas. In the case of contract labourers there is no supervision or control by the principal employers. The petitioner having admitted that the concerned workmen are contract labourers, the question of their absorption or regularization do not arise. The Respondents have not been prevented from engaging contract labour. The Respondents do not know about the details of the concerned workmen. It is the Contractors who do the work and they only know about the details of their workmen. If the workmen have worked for more than 480 days they are to claim permanency with the Contractors and not with the Respondents. The petitioner is not entitled to any relief.

5. The workmen involved in ID 301/2004 are said to be doing the work of house-keeping under the same SSA. The workmen involved in ID 302/2004 are said to be doing Line Work. The same petitioner has raised these disputes as well with contentions similar to those in ID 300/2004. Absorption of these workmen also are claimed by the petitioner. The Respondents have filed Counter Statements in these IDs also raising contentions similar to those in ID 300/2004.

6. The parties being the same and all the disputes having arisen from the same SSA, the three disputes were tried jointly. Evidence was recorded in ID 300/2004, treating it as the main case.

7. The evidence consists of oral evidence of WWs 1 to 4 and MW1 and also documents marked as Ext.W1 to Ext.W11 and Ext.M1 to Ext.M12.

8. **The points for consideration in the three IDs are:**

- (i) Whether the demand of the petitioner for absorption of the workmen is justified?
- (ii) What if any is the relief to which the concerned workmen are entitled?

The Points

9. The Petitioner Union has raised the dispute in ID 300/2004 on behalf of 20 workmen said to be doing cable work and whose names and other details are given in the annexure to the schedule of reference. 45 workmen are involved in ID 301/2004 and 43 workmen in ID 302/2004. According to the petitioner union all these workmen have been doing work which is perennial in nature. The contract system under which they are said to be working are stated to be sham and nominal. According to the petitioner the concerned workmen are entitled to be absorbed in the service of BSNL as

the contracts through which they are working are sham and nominal and also because they have completed 480 days of work within a period of 24 calendar months.

10. Three of the concerned workmen have given evidence as WW1 to WW3 respectively to establish the case that they are entitled to absorption. WW4 is the Circle Treasurer of the Petitioner Union examined to establish that the petitioner has got locus-standi to espouse the cause of the concerned workmen. The Respondents have examined Deputy General Manager of Dharmapuri SSA as MW1.

11. WW1 has give evidence on behalf of himself and other the workmen involved in ID 300/2004. He has stated in his Proof Affidavit filed by him that all the workmen involved in ID 300/2004 have completed 480 days of continuous service within a period of 24 calendar months. He has further stated in his affidavit that all of them are discharging duties in connection with telegram delivery and house-keeping works. According to him, the work done by them is perennial in nature. He has stated that the receipts of payment to them were countersigned by the officials of Department of Telecom earlier and later of BSNL. He has further stated that all of them were engaged by the department and not by Contractors. The contract system through which they were allegedly engaged are said to be sham and nominal.

12. WW2 has given evidence on behalf of 45 workers involved ID 301/2004. The evidence given by WW3 is on behalf of workmen involved in ID302/2004. These two witnesses also have raised contentions similar to that of WW1 in the affidavits and have stated that all the workmen are entitled to be absorbed by BSNL.

13. It is to be seen whether the documents produced justify the case put forth through the witnesses. Ext.W1 is the document described as ACE-2 account. This contains particulars of payment made to different persons for different types of work. The amount paid, the voucher number, the date for which payment is made, etc. are given. The names of several persons who had received payment are seen mentioned in this. Among these the name of Manivannan examined as WW1 also appear. The first entry regarding payment is in Page-39 showing that payment was made to him on 29.07.1999. Then there is payment on 01.09.1999 (Page-44). Payment is seen made on 09.12.2000 (Page-86), 20.01.2001 (Page-84) in February 2001 (Page-80) and in August 2003 (Page 58 and 64) as well. There is no dispute regarding the genuineness of this document. It is clear from this document that WW1 has been receiving payment from July 1999 and he was still working for the establishment even in August 2003, after the dispute raised. Of course, the payments are referred to as contract bills. Apart from this is the fact that payments are seen made only once or twice in a year. However, there is the evidence given by WW1 that he is still working for BSNL. This evidence given by WW1 is not disputed. So it could be gathered from the available documents and the evidence given by WW1 that the case that he had been continuously working for the Respondents is true at least in respect of the period from the middle of 1999. If he was not continuously working it is unlikely that he is even now continuing to work for the Respondents. The petitioner having produced sufficient evidence to probabalize the case, it is for the Respondents to prove otherwise. In the absence of this continuous work by WW1 could be deciphered.

14. Ext.W4 is the ACE-2 account produced to prove the case of Saminathan examined as WW2. Details of payment made to him starting from 04.01.1999 are available in this. Payments are seen made in 2000, 2002, 2003 and 2005 as seen from Pages 3, 4, 8, 9, 10, 11, 12, 20, 21 and 22. Payment is seen made for doing duty as Watchman, Security, etc. WW2 also has stated that he continues to work in the establishment.

15. Exts.W6 and Ext.W7 are intended to establish the case of Senthil examined as WW3. Ext.W6 is a document described as OFC Route Working Days particulars. This contains the name of the person who worked, the date, starting spot, finding spot, etc. There is column for remarks also in which it is written whether the route is normal or it is faulty etc. the Officer in Charge of Karimangalam Exchange has signed and put seal in almost all the pages. The particulars of work starting from 13.04.1998 and upto 10.04.1999 are available in this. This gives the daily account of the work done by WW3 on all the days. Ext.W7 is also such a document containing particulars of the work done for the period from 03.05.1999 to 28.07.2004. It is very much clear from these two documents that WW3 was working for the establishment at least from April 1998 and was continuing even after the dispute was raised. WW3 has stated during his evidence that he has started to work for the Respondents on 13.04.1998 and is still working. The case of WW3 that he continues to work for the establishment was not disputed by the Respondents.

16. Other than the documents referred to above no other documents are available to establish the case of the petitioner. No documents are produced at all to prove the case of workmen other than WWs 1 to 3 involved in the three IDs. In the absence of any proof the claims on behalf of those workmen have to be rejected.

17. It could be seen from the documents discussed earlier that WW1 to WW3 were under the direct supervision and control of the Respondents during their work. Ext.W1 and Ext.W4 contains the signature of Sub-Divisional Engineer and also the seal. It could be seen from these documents that though payment is described as by contract bill, payment is directly made to these persons who were actually doing the work. They themselves were the workmen and were not doing work through any contractual agency as is the case of the Respondents. Payments are seen made by the

establishment directly and not through a third person described as Contractor. So far as Ext.W6 and Ext.W7 are concerned also there was direct supervision by the establishment and these do not reveal the existence of an agency acting as Contractor. It could be deciphered from this that the so-called contract system put forth by the Respondents is only sham.

18. The counsel for the Respondents have referred to the decision of the Apex Court in Uma Devi's case reported in 2006 4 SCC 1 to contend that there cannot be regularization of the workmen as they were engaged without following due process of selection as envisaged in constitutional scheme. However, the dictum laid down in the Uma Devi's Case has been subsequently explained in the case MAHARASHTRA STATE ROAD TRANSPORT CORPORATION VS. CASTERIBE RAJYA PARIVAHAN KARMACHARI SANGHATHANA reported in 2009 2 SCC (L&S) 513. It has been held in the above decision that the powers of the Industrial and Labour Courts were not under consideration in Uma Devi case and issues like one pertaining to unfair labour case was not at all referred to, considered or decided in Uma Devi case. Unfair labour practice on the part of the employer in engaging them as Badlis, casuals or temporaries and to continue them as such for years with the object of depriving them of the status and privilege of permanent employees as provided in Item-6 of schedule IV and the power of Industrial and Labour Courts under Section-30 of the Act did not fall for adjudication or consideration before the Constitution Bench, it was held. It was also held that Uma Devi does not denude the Industrial and Labour Courts of the statutory power to order permanency of the workers who have been victims of unfair labour practice on the part of the employer.

19. When considered in the light of the above proposition of law it could be seen that the three workmen who had been made to work continuously in the establishment under the guise of contract worker or even otherwise are entitled to be regularized in the establishment. The establishment had been extracting work from them at a very low rate of wages for a long time. They should not be allowed to continue it. Even now, after years of work, they continue as workmen with very little amount as wages when compared to regular workers. There is no justification for this.

20. MW1, the Deputy General Manager of Dharmapuri SSA has been examined on behalf of the Respondent. He has stated that Ext.M1 is the notification which would show that BSNL Employees Union is given recognition only to represent the matters of its own members. According to the Respondent the Petitioner Union has no locus-standi to raise the dispute. WW4, an official of the Union has been examined to meet this case. Ext.W9 the bye-laws of the Union and Ext.W10 the resolution passed by the Union on 30th and 31st October, 2001 are marked through this witness. WW4 has stated that as per the bye-laws of the Union it is entitled to espouse the cause of BSNL employees in general. Apart from that it has decided to espouse the cause of all workmen who had not been regularized, by Ext.W10 resolution. So the contention that the Union is not competent to espouse the cause of the workmen will not hold good.

In view of the above discussion WW1-Manivannan (ID 300/2004), WW2-Saminathan (ID 301/2004) and WW3-Senthil (ID 302/2004) shall be absorbed in the service of BSNL within two months of the publication of the Award.

Awards are passed accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 22nd March, 2017)

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st Party/Petitioner Union : WW1, Sri G. Manivannan
WW2, Sri A. Swaminathan
WW3, Sri A. Senthil
WW4, Sri K. Srinivasan

For the 2nd Party/Respondents : MW1, Sri C. Theerthagiri

Documents Marked:

On the petitioner's side

Ex.No.	Date	Description
Ext.W1	-	AC2 Account
Ext.W2	-	Annexure 2(K) petition
Ext.W3	-	Wages Bill
Ext.W4	-	AC2 Account

Ext.W5	-	Annexure 2(K) petition
Ext.W6	-	OFC Route work working days particulars
Ext.W7	-	Line work working days particulars
Ext.W8	-	Annexure 2(K) petition
Ext.W9	-	Bye-laws of the Union
Ext.W10	30/31 Oct'2001	Resolution of the union
Ext.W11	21.03.2006	Lok Sabha Admitted Provisional Starred Question Dy. NO.10145 for 19.12.2005 by Shri Ganesh Singh regarding regularisation of contract Workers.

On the Management's side

Ext.No.	Date	Description
Ext.M1	24.12.1992	Copy of DOT, New Delhi letter no. 29-18/91-SRT dated 24.12.1992 addressed to CGMR, Calcutta Phones and Endorsement No. E.1/107/Blgs/92-93/3 dated TR-1 the 02.02.1993
Ext.M2	30.03.1985	Office of the Director General Posts & Telegraphs regarding ban order for recruitment of casual labours.
Ext.M3	25.07.1989	Letter from Chief General Manager, Telecommunications, Tamil Nadu Circle, Madras-600002 regarding eligibility of casual labour to become office bearer of the Unions
Ext.M4	-	Copy of Page 137 of Appendix 3 from P&T Manual Vol.III
Ext.M5	-	Copy of Appendix No. 3 – Preservation of Records
Ext.M6	05.11.2001	Letter from BSNL to All Chief General Managers regarding adoption of the existing Appointing Authorities in respect of absorption of Group C and D staff in BSNL
Ext.M7	-	Copy of Appendix 13A at Page 426 of Financial & Hand Book of P&T Rules which deals with Rule-331
Ext.M8	-	Copy of letter from CGM, Telecom, Chennai to all Subordinate Offices
Ext.M9	-	Copy of the agreement entered into between BSNL and TEXCO, Chennai, contractor.
Ext.M10	08.01.2003	Contract Labour (Regulation and Abolition) Act,1970 and Central Rules,1971-Grant of Certificate of Registration-reg
Ext.M11	22.06.1995	Copy of the document of prescribed procedure to followed by the Department in the appointment of Group "D" employees category.
Ext.M12	-	Model Bill.

नई दिल्ली, 25 अप्रैल, 2017

का.आ. 1129.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार महाप्रबंधक, बीएसएनएल, त्रिची व अन्य एवं उनके कर्मचारी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 317/2004, 321/2004, 346/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.04.2017 को प्राप्त हुआ था।

[सं. एल-40011/10/2003-आईआर (डीयू),

सं. एल-40011/12/2003-आईआर (डीयू),

सं. एल-40011/13/2003-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 25th April, 2017

S.O. 1129.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 317/2004, 321/2004, 346/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in Annexure, in the industrial dispute between the employers in relation to the General Manager, BSNL, Trichy and others and their workman, which was received by the Central Government on 03.04.2017.

[No. L-40011/10/2003-IR (DU),

No. L-40011/12/2003-IR (DU),

No. L-40011/13/2003-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 22nd March, 2017

Present : K.P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 317, 321 and 346 of 2004

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Bharat Sanchar Nigam Ltd. and Two Others and their workman)

BETWEEN :

The Circle Secretary : 1st Party/Petitioner Union
BSNL Employees Union
No. 3/71, 4th Street, Raghava Nagar
Madipakkam
Chennai-600091

AND

1. The General Manager : 2nd Party/1st Respondent
BSNL, Trichy
2. The Chairman & Managing Director : 2nd Party/2nd Respondent
BSNL, Sanchar Bhawan
New Delhi-110001
3. The Chief General Manager : 2nd Party/3rd Respondent
BSNL, Tamilnadu Circle
Anna Salai
Chennai-600002

Appearance:

For the 1st Party/Petitioner Union : M/s. K.M. Ramesh, Advocates

For the 2nd Party/Respondents : Sri D. Simon, Advocate

S.No.	Industrial Dispute No.	Reference No.
1.	317/2004	L-40011/10/2003-IR (DU) dated 13.02.2004
2.	321/2004	L-40011/12/2003-IR (DU) dated 13.02.2004
3.	346/2004	L-40011/13/2003-IR (DU) dated 13.02.2004

The Central Government, Ministry of Labour & Employment referred the IDs mentioned above to the Industrial Tribunal, Chennai for adjudication. The IDs were numbered as ID 317/2004, 321/2004 and 346/2004 respectively. In both IDs the parties have entered appearance through the counsel and filed claim and counter statement respectively.

2. The schedule mentioned in the orders of reference in the above IDs are as under:

ID 317/2004

“Whether the claim of the Union for absorption of contract labours (as per Annexure) by the management of BSNL, Telecom, Trichy is legal and justified and if so to what relief the workmen are entitled to?”

ID 321/2004

“Whether the claim of the Union for absorption of contract labours (as per Annexure) by the management of BSNL, Telecom, Trichy is legal and justified and if so to what relief the workmen are entitled to?”

ID 346/2004

“Whether the claim of the Union for absorption of contract labours (as per Annexure) by the management of BSNL Telecom, Trichy is legal and justified, and if so to what relief the workmen are entitled to?”

COMMON AWARD

3. On receipt of the Industrial Dispute this Tribunal numbered it as ID 317, 321 and 346 of 2004 and issued notices to both sides. Both sides entered appearance through their counsel and filed Claim and Counter Statement respectively.

4. The averments in the Claim Statement in ID 317 of 2004 are as below:

The petitioner is a trade Union having substantial number of permanent workmen in BSNL as its members. The workmen concerned in the case are doing line work in the Respondent establishment. They are working through alleged Contractor. Even though the Contractors changed the workmen continued to be the same. The work done by them is perennial in nature. The Contractor in most of the cases are one of the employees. The work done by the concerned workmen is an integral part of the work of the Department. The concerned workmen are entitled to be absorbed in the service of the Respondents from the date of their joining the service together with continuity of service and other attendant benefits.

5. The Respondents have filed Counter Statement contending as below:

The Petitioner Union is not a representative Union of BSNL. It has no capacity to represent the staff of the Respondent or workmen on contract. The workmen for whom relief is claimed are not members of the Petitioner Union. The petitioner cannot represent those who are not its members. The Trichy Telecom District Area has entered into work contract with some agencies. The Agency has the right to engage any person to complete the work. The work is supervised by the Agency. The Respondent is paying bills to the Agency only. Contract used to be awarded only for six months. The details of the workmen given in the Claim Statement are false. Departmental works are entrusted to approved Contractors and payments are made only to approved Contractors. Payment used to be made not on monthly basis but on the basis of quantum of work. BSNL has got regular set of staff for carrying out work which are regular in nature. Works which are temporary in nature are allotted to the Contractors as these are not perennial in nature. The claim that the concerned workmen are doing the same work as done by the regular employees and the work is perennial in nature are not correct. The contract is entered into for a certain period and the same would expire on the due date. So the question of the work becoming perennial in nature does not arise. The Respondent is having registration certificate under CLRA Act and all the Contractors are having license under the Act also. Initially the department has been paying directly for contingency works. Contract labour was paid on requirement basis and also pro-rata basis. The petitioner is not entitled to any relief.

6. The workman concerned in ID 321 of 2004 are said to be doing security work. A list of 56 workmen concerned in the dispute is attached to the order of reference. In this Claim Statement also the petitioner has stated that the contract, if any entered into by the Respondents is sham and nominal and actually all the workmen are working under the Respondents. The petitioner has claimed absorption of the concerned workmen in the service of the Respondents from their date of joining the service together with continuity of service and other benefits. The Respondents have filed Counter Statement in this ID denying the averments in the Claim Statement and almost in tune with the Counter Statement in ID 317/2004. According to the Respondents the work was got done through contractual agencies and they have nothing to do with the concerned workmen.

7. The workmen concerned in ID 346/2004 are said to have been working as Water Boys. On behalf of these workmen also it is pleaded by the petitioner that they were working directly under the Respondents and the contract system, if any entered into by the Respondents is only a sham one. The annexure to the schedule of reference to this ID contains a list of 24 workmen who are said to have joined the service of the Respondents on different dates. The Respondents have filed Counter Statement in this ID also denying the averments in the Claim Statement, in tune with the contention raised in the other two IDs.

8. The three IDs were tried together at the instance of the parties, all of the workmen having claimed to be under Trichy SSA. Evidence was recorded in ID 317/2004 treating this as the main case, this being the first in the series.

9. The evidence in the cases consists of oral evidence of WW1 to WW3 and MW1 and MW2 and documents marked as Ext.W1 to Ext.W29 and Ext.M1 to Ext.M34. All the Respondents being Officers of the BSNL and their contention being the same they are referred to as the Respondent indicating BSNL, the Management.

10. **The points for consideration in all the IDs are:**

- (i) Whether the non-absorption of the concerned workmen by the Management of BSNL is legal and justified?
- (ii) What, if any is the relief to which the concerned workmen are entitled?

The Points

11. 119 workmen are involved in ID 317/2004, 56 in ID 321/2004 and 36 in ID 346/2004. The annexure to the schedule of reference contains the list of these workmen along with their details such as their date of joining, the working place, their pay, supervising authority, controlling authority, etc. Rajan Babu examined as WW1 in the case is S.No. 100 in the annexure to the schedule of reference in ID 317/2004. He is the only person who has given evidence on behalf of the workmen in this ID. This witness has stated that his evidence is on behalf of all the concerned workmen in the other two IDs as well. WW3 & WW4 are workmen involved in ID 346/2004.

12. A process of elimination can be resorted to while dealing with the workmen concerned. Apart from documents pertaining to WW1, WW3 & WW4, there are some documents in respect of V.M. Abbas Ali who is S.No. 19, Murugesan S.No. 18 and Habibur Rahman S.No. 14 in ID 346/2004. P. Manoharan S.No. 9 and J. Nias S.No. 10 in ID 321/2004 and Kandasamy whose name does not find a place in any of the lists. So far as the other workmen named in the annexure to the schedule of reference are concerned, the petitioner has not produced any documents to prove that they have ever worked with DoT the predecessor of BSNL the Respondent and continued to work with the Respondent after it was formed. There is only a passing reference by WW1 in the Proof Affidavit. Even without naming them that all these workmen had been with the Respondents. None of these workmen have come forward to give evidence to establish their case. In the absence of any evidence to show that they have ever worked with the Respondent or its predecessor the claim of these workmen for absorption in the service of the Respondent can be rejected even at the outset.

13. Those workmen, other than WW1, WW3 & WW4 earlier named and for whom some documents are available can be considered now. Ext.W9 is said to be the particulars regarding the work of V.M. Abbas Ali. He is referred to as Water Boy at Chinnatharapuram. The document contains the name of the workman for each day starting from 10.02.1999 with the signature and seal of Junior Telecom Officer of Chinnatharapuram. This continued up to 09.08.1999. One does not know what is the purpose this document is serving. This is written in plain paper and not in any format which would have shown that it is a document coming from the Respondent. Except for the alleged signature of the Junior Telecom Officer, there is nothing to show the authenticity of this document. The concerned workman himself has not come forward to speak about this document. Even if it is taken to be a genuine document, this sole document will not entitle Abbas Ali, the concerned workman to have a relief as claimed by him. Abbas Ali has worked for just 8 months as per this document. No evidence is available to show that he was still working in the Respondent at the time of reference. No evidence is available to show that he was working directly with the Respondent or even through a Contractor. So the claim of Abbas Ali based on this document is to be rejected.

14. The claim on behalf of Murugesan based on Ext.W10 can be examined now. This consists of some Water Boy Bills at Singal Telephone Exchange signed by Murugesan. The document even contains an endorsement by a Junior Telecom Officer to the effect that the work has been carried out satisfactorily. Payment is seen made for work done during the entire days of the month without even a holiday. On examining these bills there can be no doubt Murugesan has received payment directly from SDoT, Karur for the work done by him. However, these bills are not sufficient to prove the case pleaded. The payments are seen made as per these bills for the different months of 1997. There are two bills for two months of 1995 also. However, the evidence in respect of this workman also suffers from the same infirmity referred to in respect of Abbas Ali. The period shown to have worked with the Respondent as per Ext.W10 is very short. It does not show if the concerned workman had been continuing with the Respondent or whether he was working with the Respondent at the time when the dispute was raised. Of course, there is a contention for the petitioner that all the documents are with the Respondent and it is for the Respondent to produce those documents and discharge their burden of proving that the workmen were not working under them. However, the petitioner should be able to adduce some evidence and only then the question of burden shifting on the Respondent and their discharging the burden arises. Murugesan, the concerned workman did not come forward to speak about his case. He seems to be satisfied with Ext.W10, the pretext of an evidence available. The oral evidence given by WW1 and other witnesses on

behalf of this witness is not at all sufficient to prove his case. So Murugesan also could be eliminated from the chase for absorption.

15. Ext.W11 contains a series of receipts in the name of Habibur Rahman, one of the workman named in the annexure to the schedule of reference in ID 346/2004. The workman is referred to as Water Boy and the receipts show payment from August to December 1998 and also January, February, April & July 1999. There is one receipt without showing any year also. All these receipts contain the endorsement of Junior Telecom Officer that the work has been carried out satisfactorily. So, no doubt these are genuine documents. However, the period of service revealed by these receipts is very short. The concerned workman did not come forward to give evidence. There is nothing to show if he was continuing with the Respondent as a direct employee or as a contract employee at the time when the reference was made. The available documents are not sufficient to prove the case of this workman.

16. Ext.W13 is in respect of K. Kandasamy. The document shows the date of engagement and the time also. There is signature of the Junior Telecom Officer in the last column in every page of the document. However, this also is for a short duration. The document reveals engagement from May 1999 to December 2000. The reason for elimination given in respect of other workmen applies to this workman also. He has not come forward to give evidence and none of the details regarding his work are available also. The document will not show in what capacity he was working. There is nothing to show he had been there at the time when the dispute was raised also. Apart from this, his name does not find a place in any of the three annexures. So this workman also is not eligible for any relief.

17. Ext.W14 are described as certificates issued by TTA, Karur in the name of P. Manoharan who is said to have worked as Security. There is also Ext.W17 which are described as the attendance particulars. However, the authenticity of these receipts cannot be vouchsafed. These are just writings in plain papers. One does not know if these contain the signature of the person concerned. These seem to have been written in one stretch in a very orderly manner. The possibility of manipulation of this document cannot be overlooked. Same is the case with Ext.W17 which is described as the attendance particulars of this workman. This too does not seem authentic for the reason that it is not in proper form and does not contain any seal of the office. Manoharan, the concerned workman has not given evidence regarding this also. So the claim of this workman also cannot be entertained.

18. Ext.W15 in the name of J. Nias described as Security also consists of certificates similar to those in Ext.W14. These are to be rejected for the same reason referred to earlier. Except this there is no other document in the name of Nias. His case also is to be rejected.

19. What is the evidence available concerning WW1? Even in respect of this workman the documents available are not sufficient to establish the case set up by the petitioner. Ext.W2 is produced as the work details in respect of WW1. This document gives the date-wise description of the work, signature of the Supervisor, etc. However, the authenticity of this document could not be taken for granted. The work details are seen given in plain sheets and looks like written in one stretch. There is no assurance that the signature as that of the Supervisor in the document is that of Officers of the Respondent. The document does not contain any seal of the department and is not written in any form provided by the department also. Ext.W3 is a certificate by a Junior Telecom Officer issued on 09.07.2002 to the effect that WW1 had worked as Assistant to the Telecom Mechanic and to the contract labours. However, this document does not state during which period the concerned workman had worked. This document was most probably issued after the dispute was raised. Ext.W4 is an issue slip of 2004 containing the signature of WW1 who has received the materials detailed in the slip. This seems to be a genuine document. But this by itself would not show that WW1 had been working in the establishment from 20.02.1999 as claimed by him. Even assuming that he was there from the time claimed there is nothing to show that he was there continuously. Ext.W6 is said to be the Attendance Register in the name of WW1. This document also is seen prepared on plain paper and does not contain any seal of the Respondent. Of course, some signatures purportedly by the Officers are there but there is no way to know if these are signatures of the concerned officials. WW1 has stated during his cross-examination that the Attendance Register was filled-up by himself. The Respondent has challenged the authenticity of this document during cross-examination. No documents are produced by the petitioner to prove that WW1 has been paid wages by the Respondent or its predecessor at any time. Ext.W7 is a certificate issued by a Junior Telecom Officer in 2006, after the dispute was raised. This states that WW1 has been working as Water Boy at Pavithram Telephone Exchange during the period from November 2004 to January 2006. This does not show anything about the engagement of WW1 for the period before the dispute was raised. Ext.W8 are said to be Engine Maintenance particulars for the period from April 2001 to December 2005 showing engagement of WW1. However, the authenticity of this document also is under doubt. This is also written in plain paper. In the absence of any proof regarding the authenticity of the signatures and the absence of any seal of the Respondent this document also could not be relied upon. In fact WW1 has admitted that the entire columns in the document were filled-up by him. The documents referred to above, marked to prove the case of WW1 are not sufficient to establish the case. Thus the case of WW1 also stands un-established. There is nothing to show that he has been working with the Respondent continuously and the contract, if any under which he has been working was sham and nominal. So he is also not eligible for any relief.

20. WW3 is Muruganandan, S.No. 7 in ID 346/2004. This witness has stated in his Proof Affidavit that he was earlier working in Kulithalai telegraph Office, that he had so worked from 02.11.1992 and had been getting Rs. 20/- per day as wages for doing works of Waterman, Delivery of Telegraph, etc. He has stated that he is at present working in Customer Service Centre at Kulithalai and is paid Rs. 3862/- per month.

21. WW3 has produced Ext.W22 to Ext.W25 in support of his case that he had been working in the establishment from 02.11.1992. Ext.W22 is described as the Attendance Registers in respect of WW3. The first of the series is probably genuine in the sense that it is found in a format. However, it does not contain any seal of the establishment. In the columns for initials some initials are seen. The document starts from 16.12.1993 and continues up to 30.04.1995. However, the next in the series could not claim even that much authenticity. The name of WW3 is found written in one stretch on each working day. In most of the months all the days are shown as working days without exception even for Sundays. WW3 has not stated why this is so. Ext.W23 series are said to be counterfoils of Money Order receipts received by Muruganandan. However, his name does not find a place in any of this. Ext.W24 is statement showing telegram delivered by Muruganandan. There is a seal and signature of an Officer in this. However, this must have been after the dispute was raised. Ext.W25 is an Inspection Report by the Senior Superintendent on visiting Kulithalai Telecom Centre. However, the name of WW3 does not find a place anywhere in this document. Ext.W26 is another Inspection Report. In this document the name of WW3 finds a place as Coolie for sweeping and carrying water. However, this is only part of a document. It is not known why the entire document is not produced. The portion which should have contained the signature of the Inspection Officer is not available. Same is the case with Ext.W27 another Inspection Report. It is only portion of a document, the last portion of which is missing. This available portion does not contain the name of WW3. This document will not serve any purpose so far as WW3 is concerned. In the absence of acceptable evidence the case of WW3 also is to be rejected.

22. WW4 is S.No. 16 in ID 346/2004. He has stated in his affidavit that he has started to work in the Telephone Exchange at Panjapatti in the year 1992 as Waterman and had been working continuously. He has stated that he is working in the establishment even now Ext.W28 and Ext.W29 are the documents concerning this witness. Ext.W28 is said to be Attendance Note for the period from 01.01.95 to 30.06.1999. This does not contain signature of any Officer. There is column for signature of a regular mazdoor and some signature appears in those columns. One cannot say if it is a genuine document or not. Then there is Ext.W29 referred to as Attendance Sheet-cum-Work Performance Sheet for the period from 01.12.1992 to 31.12.2011. The authenticity of this document is also doubtful. It is written in a plain paper. On the basis of these documents WW4 could not be given any relief.

23. In view of my discussion above the petitioner is not entitled to any relief in any of the three IDs.

All the references are answered against the petitioner. Awards are passed accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 22nd March, 2017)

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1 st Party/Petitioner Union	:	WW1, Sri P. Rajanbabu
		WW2, Sri K. Srinivasan
		WW3, Sri P.A. Muruganandam
		WW4, Sri V. Devaraj
For the 2 nd Party/Respondents	:	MW1, Sri A. Jayakumar
		MW2, Sri O. Anbhazhagan

Documents Marked:

On the petitioner's side

Ex.No.	Date	Description
Ext.W1	January 2005	Photocopies of Sunami Relief Camp conducted by BSNL at Keechakuppam, Nagapattinam and Velankanni areas
Ext.W2	Feb, April, May, June, July, Aug. & Sept, 1999	NPC work discharged by P. Rajanbabu

Ext.W3	09.07.2002	Service Certificate issued by JTO Sungagate, Karur to P. Rajanbabu
Ext.W4	04.08.2004	Tower Material received by P. Rajanbabu on instructions From SLM, Dandayuthapani
Ext.W5	-	2(k) annexure to the petition
Ext.W6	-	Attendance Register of Rajanbabu from April 2001 to Feb. 2006
Ext.W7	01.02.2006	Service Certificate of Rajanbabu
Ext.W8	-	Engine maintenance particulars to Rajanbabu from April 2001 to Dec. 2005
Ext.W9	Feb., March, April, May, June, July, Aug, Sept. 1999	Working particulars of V.M. Abbas Ali countersigned by JTO Chinna Dharapuram, Karur
Ext.W10	March, Dec. 1995, Jan. March & April, 1997	JTO, Telegraphs directing SDOT to pay wages (Wage Slip) of R. Murugesan, Sengal
Ext.W11	July, Aug. Sept., Oct., Nov., Dec, 1998, Jan, Feb., April & Sept. 1999	Letter from D. Habibur Rehman seeking salary for January 1999 from JTO, Outdoor, South, Karur
Ext.W12	-	Annexure to 2(k) petition
Ext.W13	May 1999 to Dec. 2001	Certificate from Pushparaj, JTO, Chinna Dharapuram to K. Kandasamy, Security, Chinna Dharapuram
Ext.W14	March 2000 to Dec, 2001	Certificate from TTA, I. John Basha, K. Paramathy, Karur to P. Manoharan for his work as Security
Ext.W15	March 2000 to Dec. 2001	Certificate from TTA, I. John Basha, K. Paramathy, Karur to J. Niyas for his work as Security
Ext.W16	-	Annexure to the 2(k) petition
Ext.W17	-	Attendance particulars of P. Manoharan from July 2002 to Feb. 2006
Ext.W18	-	Attendance particulars of J. Niyas from Jan. 2001 to Feb. 2006
Ext.W19	-	Bye-Laws of the Union
Ext.W20	30/31 Oct. 2001	Resolution of the Union
Ext.W21	21.03.2006	Lok-Sabha Admitted Provisional Starred Question Dy. No. 10145 for 19.12.2005 by Sri Ganesh Singh Regarding regularization of contract workers
Ext.W22	16.12.1993 To 31.12.2001	Attendance Registers (3 Nos.) (P.A. Muruganandam) (Ext.W-1)
Ext.W23	xxxxxxxxx	Counterfoil of Money Order Receipts (22 Nos.) (P.A. Muruganandam) (Ext.W-2 Series)
Ext.W24	xxxxxxxxx	Statement showing the telegram delivery by P.A. Muruganandam (30 Nos.) (W-3 Series)
Ext.W25	01.05.1994	Inspection Report (P.A. Muruganandam) (W-4)
Ext.W26	27.07.1994	Inspection Report (P.A. Muruganandam) (Ext.W-5)
Ext.W27	07.11.1997	Inspection Report (P.A. Muruganandam) (Ext.W-6)

Ext.W28	01.01.1995 To 30.06.1999	Attendance Note (V. Devaraj) (Ext.W-7)
Ext.W29	01.12.1992 To 31.12.2011	Attendance Sheet-cum-work performed sheet (19 sheets)

On the Management's side

Ext.No.	Date	Description
Ext.M1	24.12.1992	Copy of DOT, New Delhi letter no. 29-18/91-SRT dated 24.12.1992 addressed to CGMR, Calcutta Phones and Endorsement No. E.1/107/Blgs/92-93/3 dated TR-1 the 02.02.1993 regarding eligibility of temporary mazdoors and DRMS for becoming members/office bearers of staff unions
Ext.M2	30.03.1985	Office of the Director General Posts & Telegraphs regarding casual labour engagement.
Ext.M3	25.07.1989	Letter from Chief General Manager, Telecommunications, Tamil Nadu Circle, Madras-600002 regarding eligibility of casual labour to become office bearer of the Unions
Ext.M4	-	Copy of Page 137 of Appendix 3 from P&T Manual Vol.III
Ext.M5	-	Copy of Appendix No. 3 – Preservation of Records
Ext.M6	05.11.2001	Letter from BSNL to All Chief General Managers regarding adoption of the existing Appointing Authorities in respect of absorption of Group C and D staff in BSNL
Ext.M7	-	Copy of Appendix 13A at Page 426 of Financial & Hand Book of P&T Rules which deals with Rlule-331
Ext.M8	-	Letter no. RET/84-1/91 dated 06/23.08.1881 regarding copy of letter from CGM, Telecom, Chennai to all Subordinate Offices
Ext.M9	-	Copy of the agreement entered into between BSNL and M/s Kalimar Constructions.
Ext.M10	25.09.1996	Regn. No. R-II/8/95-D3 regarding copy of the document for registering BSNL as Principal Employer under CLRA Act.
Ext.M11	22.06.1995	Copy of the Notification No. 269-26/90-STN of prescribed procedure to be followed by the Department in the appointment of Group “D” employees category.
Ext.M12	30.08.2002	Copy of the Model Bill prepared for the Contractor.
Ext.M13	28.07.2004	Copy of the license given by Contractor M/s. Tamil Nadu Ex-Servicemen Corporation for 2004 and M/s First Man Security Service for the year 2002
Ext.M14	26.03.2013	EPF Print Out
Ext.M15	11.10.1988	CGMT/MS No. RET/84-2/85 regarding employment of part-time officials
Ext.M16	17/23.11.1989	CGMT/TNC No. RET/84-1/87 regarding casual labourers (grant of temporary status and regularization) scheme
Ext.M17	10.05.1990	CGMT/MS No. RET/84-1/82 regarding recruitment to the cadre of Group “D”, 1990
Ext.M18	04.01.1992	CGMT/TNC No. RET/84-1/91 regarding regularization of casual labourer with temporary status
Ext.M19	03.02.1993	CGMT/TNC No. RET/84-1/91 regarding regularization of temporary status mazdoors under 10 years scheme –part-time and full-time prior to becoming TSM

Ext.M20	02.04.1993	CGMT/TNC No. RET/84-1/91 regarding 10 years regularization of temporary status mazdoor
Ext.M21	19.06.1992	GMT/TR Memo No. E-7/7/92-93/85 regarding regularization of casual mazdoors/part-time officials who have rendered 10 years of service as on 31.12.1991
Ext.M22	21.09.1992	GMT/TR Memo No. E-7/7/92-93/147 regarding regularization of temporary status casual labours who have rendered 10 years of service as on 31.12.1991 and 31.03.1992
Ext.M23	11.02.1994	GMT/TR No. E-7/7/93-94/7 regarding regularization of temporary status mazdoors who have completed 10 years of service as on 31.03.1994
Ext.M24	04.01.1995	GMT/TR No. E-7/7/94-95/3 regarding regularization of temporary status mazdoors who have completed 10 years of service as on 31.03.1995
Ext.M25	19.01.1996	GMT/TR No. E-7/7/95-96/3 regarding regularization temporary status mazdoors who have completed 10 years of service as on 31.01.1995
Ext.M26	05.02.1997	GMT/TR No. E-7/7/96-97/5 regarding regularization of temporary status mazdoors who have completed 10 years of service as on 31.03.1997
Ext.M27	04.05.1998	GMT/TR No. E-E1/107/Rlgs/52 regarding regularization of casual labourers with temporary status engaged after imposition of ban orders furnishing of proposals
Ext.M28	29.09.2000	Letter No. DOT/ND 269-94/98-STN.II regarding regularization of casual labour
Ext.M29	02.01.2001	Letter No. BSNL/4/SR/2000 regarding record of discussion held on 02.01.2001 with three federations
Ext.M30	25.01.2001	GMT/TR letter No. E-7/7/2000-2001/13 regarding regularization of casual labour
Ext.M31	Oct. 2014	EPF Statement of M/s Pudukkottai Security Services
Ext.M32	Dec. 2014	EPF Statement of M/s Pudukkottai Security Services
Ext.M33	April 2015	Particulars of EPF & ESI of Trichy SSA.
Ext.M34	26.11.2004	Shree Security Service Pudukkottai letter regarding payment of Minimum Wages for Housekeeping Labourers

नई दिल्ली, 25 अप्रैल, 2017

का.आ. 1130.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मुख्य महाप्रबंधक, बीएसएनएल, तमिलनाडु सर्किल, चेन्नई व अन्य एवं उनके कर्मचारी के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 352/2004, 387/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.04.2017 को प्राप्त हुआ था।

[सं. एल-40011/47/2003-आईआर (डीयू),

सं. एल-40011/54/2003-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 25th April, 2017

S.O. 1130.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 352/2004, 387/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in Annexure, in the industrial dispute between the employers in relation to the Chief General Manager, BSNL, Tamilnadu Circle, Chennai and others and their workman, which was received by the Central Government on 03.04.2017.

[No. L-40011/47/2003-IR (DU),

No. L-40011/54/2003-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
CHENNAI**Wednesday, the 22nd March, 2017**Present : K.P. PRASANNA KUMARI, Presiding Officer****Industrial Dispute No. 352 and 387 of 2004**

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Bharat Sanchar Nigam Ltd. and Another and their workman)

BETWEEN :

The Circle Secretary : 1st Party/Petitioner Union
BSNL Employees Union
No. 3/71, 4th Street, Raghava Nagar
Madipakkam
Chennai-600091

AND

1. The Chief General Manager : 2nd Party/1st Respondent
BSNL, Tamilnadu Circle, Anna Salai
Chennai-600002
2. The General Manager, Telecom : 2nd Party/2nd Respondent
BSNL, 1, Seerangapalayam West
Salem-636007

Appearance:

For the 1st Party/Petitioner Union : M/s. K.M. Ramesh, Advocates
For the 2nd Party/1st & 2nd Respondents : Sri D. Simon, Advocate

S.No.	Industrial Dispute No.	Reference No.
1.	352/2004	L-40011/47/2003-IR (DU) dated 19.05.2004
2.	387/2004	L-40011/54/2003-IR (DU) dated 09.07.2004

COMMON AWARD

The Central Government, Ministry of Labour & Employment referred the IDs mentioned above to the Industrial Tribunal, Chennai for adjudication. The IDs were numbered as ID 352 and 387 of 2004 respectively. In both IDs the parties have entered appearance through the counsel and filed claim and counter statement respectively.

The schedules mentioned in the respective IDs are :

ID 352/2004

Whether the demand of the Union for absorption of 50 workers (list enclosed) engaged through Contractors by the General Manager, BSNL, Salem in Security Work is justified? If not, to what relief they are entitled?

ID 387/2004

Whether the demand of the Union for absorption of 6 workers (list enclosed) engaged through Contractors by the General Manager, BSNL, Salem in AC Unit is justified? If not, to what relief they are entitled to?"

4. The averments in the Claim Statement filed by the petitioner in ID 352/2004 are as below:

The petitioner is a Registered Trade Union having substantial number of permanent workmen working in BSNL as its members. The dispute is raised on behalf of workmen working in the Office of BSNL, Salem. They are doing Security Work. These workmen are working directly under the control and supervision of BSNL. They are doing the very same work carried out by the permanent employees of the Department. The work done by them is perennial in

nature. The workmen cannot be treated as contract labour but have to be treated as part and parcel of the regular service of the Department. All the workmen concerned in the dispute are Class-IV employees for which sponsorship from Employment Exchange is not required. The work performed by them are essential. The so-called contract system is a sham one. The overall control of the workmen including administrative control remained with the Department. The alleged Contractors are regular staff of the Department. They engage the workers, supervise the work, take their attendance and claim and pay their wages. There are regular sanctioned posts for regularizing the workmen concerned in the case. The BSNL is an establishment as per Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act. The concerned workmen having completed 480 days of work in a period of 24 calendar months should be made permanent. An Award may be passed holding that the workmen are entitled to regular absorption in the service of the establishment from the date of their joining, together with continuity of service and attendant benefits.

4. The Respondents have filed Counter Statement contending as below:

The petitioner has no locus-standi to espouse the cause of persons who are not employees of BSNL. The petitioner is not a recognized union. The subject matter of the claim does not relate to the service conditions of any of the employees of BSNL. As such the claim is not maintainable. The Contractors have not been impleaded as parties. So the dispute is bad for non-joinder of necessary parties. It is not correct to state that the concerned workmen are doing work of the same nature as done by regular employees, that the work is perennial in nature, that there is direct control and supervision by the Respondents, that the Contractors are the Officers of BSNL, etc. Though the petitioner has admitted that the workmen are contract labourers they are described as casual labourers doing the work of Class-IV employees. These are mutually inconsistent pleas. In the case of contract labourers there is no supervision or control by the principal employers. The petitioner having admitted that the concerned workmen are contract labourers, the question of their absorption or regularization does not arise. The Respondents have not been prevented from engaging contract labour. The Respondents do not know about the details of the concerned workmen. It is the Contractors who do the work and they only know about the details of their workmen. If the workmen have worked for more than 480 days they are to claim permanency with the Contractors and not with the Respondents. The petitioner is not entitled to any relief.

5. The same Union has raised the dispute in ID 387/2004 on behalf of 6 workmen who are said to be working on AC Units. The contentions similar to those in ID 352/2004 are raised by the Union on behalf of these workmen as well. Their absorption in the establishment is claimed by the Union. The Respondents have filed Counter Statement in this ID as well raising contentions similar to those in ID 352/2004.

6. Both matters being under the same SSA and parties being the same the two disputes were tried jointly. Evidence was recorded in ID 352/2004 treating it as the main case.

7. The evidence consists of oral evidence of WW1 and WW2 and MW1 and MW2 and also documents marked as Ext.W1 to Ext.W7 and Ext.M1 to Ext.M12.

8. **The points for consideration in the two IDs are:**

- (i) Whether the demand of the Petitioner Union for absorption of the workmen involved in the two IDs are justified?
- (ii) What are the reliefs, if any, to which the concerned workmen are entitled?

The Points

9. The Petitioner Union has raised the dispute in ID 352/2004 on behalf of 50 workmen whose names and other details are given in the annexure to the schedule of reference. These workmen are said to be doing Security Work under BSNL, Salem SSA. ID 387/2004 is raised on behalf of 6 workmen whose names and details are given in the annexure to the schedule of reference in the said ID. These workmen are said to be working on AC Units. The petitioner has claimed that all these workmen have completed 480 days of work within a period of 24 calendar months. It is further stated that the contract system through which the concerned workmen are working are sham and nominal. The petitioner has claimed absorption of the workmen in the establishment on these grounds.

10. The petitioner has examined one workman involved in ID 352/2004 as WW1 to establish the case. WW2 is the Circle Treasures of the Union examined to meet the case of the Respondents that the Petitioner Union has no locus-standi to espouse the cause of the concerned workmen.

11. WW1 has stated in the Proof Affidavit filed by him that all the workmen concerned in ID 352/2004 as well as those concerned in ID 387/2004 were employed in Salem SSA and they are working in different places under this SSA. According to him before the formation of BSNL all of them were working for Department of Telecom and they were paid wages by wage receipts by the Department. He has also stated that the workmen involved in ID 352/2004 were

discharging the duties of Security / Watchman and workmen involved in ID 387/2004 were attending to the service and repair of Air-conditioners. According to him there were more than 200 Window Air-conditioners under the SSA apart from Split and Centralized Air-conditioners. WW1 has stated in his affidavit that all the workmen were under the direct control and supervision of the officials of the BSNL, and earlier the Department of Telecom. According to him the contract system put forth by the Respondents is sham. The Contractors are said to be regular employees of the Department. All the workmen were given directions regarding work by the officials of the Department. The names of the officials who are said to have extracted work from the concerned workmen are also given in the affidavit.

12. Though WW1 has given evidence on behalf of all the other workmen concerned, documents pertaining to their work produced by the petitioner are not sufficient to prove the case. Ext.W1 is a document described as a Transfer Order which states that the security in Pilikalpalayam and Kothamangalam exchange are transferred on rotation basis. It is in fact not a transfer but a change in the shift during which they are to work. There are 3 names written in the next page of the document. Ext.W2 is an order regarding deployment of Security Guards. Not only that this is of the year 2004, after the dispute was raised but the names of none of the workmen are given in this document also. Ext.W3 & Ext.W4 are copies of the annexure to the schedule of reference which are not of any use in proving the case.

13. Ext.W1 and Ext.W2 which are the only documents produced to prove the case are not sufficient to serve the purpose of the case. Even the name of WW1 does not appear in these two documents. These are not of any use in finding out if the concerned workmen had worked with the establishment at all. Such being the case the petitioner is not entitled to any relief in the two IDs.

In view of the discussion above both IDs are answered against the petitioner. Awards are passed accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 22nd March, 2017)

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1 st Party/Petitioner Union	:	WW1, Sri M. Kannan WW2, Sri K. Srinivasan
For the 2 nd Party/Respondents	:	MW1, Sri V.Varadharajan MW2, Sri K. Ganesan

Documents Marked:

On the petitioner's side

Ex.No.	Date	Description
Ext.W1	19.05.2000	Transfer Order
Ext.W2	14.05.2004	Respondent letter regarding Deployment of Security Guards
Ext.W3	-	Annexure to 2(K) (I.D.No.352/2004)
Ext.W4	-	Annexure to 2(K) (I.D.No.387/2004)
Ext.W5	-	Bye-laws of the Union
Ext.W6	30/31 Oct'2001	Resolution of the union
Ext.W7	21.03.2006	Lok Sabha Admitted Provisional Starred Question Dy. NO.10145 for 19.12.2005 by Shri Ganesh Singh regarding regularisation of contract Workers.

On the Management's side

Ext.No.	Date	Description
Ext.M1	24.12.1992	Copy of DOT, New Delhi letter no. 29-18/91-SRT dated 24.12.1992 addressed to CGMR, Calcutta Phones and Endorsement No. E.1/107/Blgs/92-93/3 dated TR-1 the 02.02.1993
Ext.M2	30.03.1985	Office of the Director General Posts & Telegraphs regarding ban order for recruitment of casual labours.

Ext.M3	25.07.1989	Letter from Chief General Manager, Telecommunications, Tamil Nadu Circle, Madras-600002 regarding eligibility of casual labour to become office bearer of the Unions
Ext.M4	-	Copy of Page 137 of Appendix 3 from P&T Manual Vol.III
Ext.M5	-	Copy of Appendix No. 3 – Preservation of Records
Ext.M6	05.11.2001	Letter from BSNL to All Chief General Managers regarding adoption of the existing Appointing Authorities in respect of absorption of Group C and D staff in BSNL
Ext.M7	-	Copy of Appendix 13A at Page 426 of Financial & Hand Book of P&T Rules which deals with Rule-331
Ext.M8	-	Copy of letter from CGM, Telecom, Chennai to all Subordinate Offices
Ext.M9	18.09.2005	Copy of the agreement entered into between BSNL and M/s. Force I Security Service
Ext.M10	24.05.2002	Certificate of Registration Contract Labour (Regulation and Abolition) Act,1970 and Central Rules,1971-Grant-reg
Ext.M11	02.05.2005	Licence granted to M/s. Force I Security Service
Ext.M12	22.06.1995	Copy of the document of prescribed procedure to be followed by the Department in the appointment of Group “D” employees category.

नई दिल्ली, 25 अप्रैल, 2017

का.आ. 1131.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मुख्य महाप्रबंधक, बीएसएनएल, तमिलनाडु सर्किल, चेन्नई व अन्य एवं उनके कर्मचारी के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 354/2004, 355/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.04.2017 को प्राप्त हुआ था।

[सं. एल-40011/45/2003-आईआर (डीयू),

सं. एल-40011/48/2003-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 25th April, 2017

S.O. 1131.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 354/2004, 355/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in Annexure, in the industrial dispute between the employers in relation to the Chief General Manager, BSNL, Tamilnadu Circle, Chennai and others and their workman, which was received by the Central Government on 03.04.2017.

[No. L-40011/45/2003-IR (DU),

No. L-40011/48/2003-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 22nd March, 2017

Present : K.P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 354 and 355 of 2004

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Bharat Sanchar Nigam Ltd. and Another and their workman)

BETWEEN :

The Circle Secretary : 1st Party/Petitioner Union
 BSNL Employees Union
 No. 3/71, 4th Street, Raghava Nagar
 Madipakkam
 Chennai-600091

AND

1. The Chief General Manager : 2nd Party/1st Respondent
 BSNL, Tamilnadu Circle, Anna Salai
 Chennai-600002
2. The General Manager, Telecom : 2nd Party/2nd Respondent
 BSNL, 1, Seerangapalayam West
 Salem-636007

Appearance:

For the 1st Party/Petitioner Union : M/s. K.M. Ramesh, Advocates
 For the 2nd Party/1st & 2nd Respondents : Sri D. Simon, Advocate

S.No.	Industrial Dispute No.	Reference No.
1.	354/2004	L-40011/45/2003-IR (DU) dated 19.05.2004
2.	355/2004	L-40011/48/2003-IR (DU) dated 19.05.2004

COMMON AWARD

The Central Government, Ministry of Labour & Employment referred the IDs mentioned above to the Industrial Tribunal, Chennai for adjudication. The IDs were numbered as ID 354 and 355 of 2004 respectively. In both IDs the parties have entered appearance through the counsel and filed claim and counter statement respectively.

The schedules mentioned in the orders are:

ID 355/2004

Whether the demand of the Union for absorption of 138 workers (list enclosed) engaged through Contractors by the General Manager, BSNL, Salem in line and cable work is justified? If not, to what relief they are entitled?"

ID 354/2004

Whether the demand of the Union for absorption of 27 workers (list enclosed) engaged through Contractors by the General Manager, BSNL, Salem in housekeeping work is justified? If not, to what relief they are entitled to?"

2. The averments in the Claim Statement filed by the petitioner in ID 354/2004 are as below:

The petitioner is a Registered Trade Union having substantial number of permanent workmen working in BSNL as its members. The dispute is raised on behalf of workmen working in the Office of BSNL, Salem, SSA. They are doing the work of Housekeeping and Cleaning. These workmen are working directly under the control and supervision of BSNL. They are doing the very same work carried out by the permanent employees of the Department. The work done by them is perennial in nature. The workmen cannot be treated as contract labour but have to be treated as part and parcel of the regular service of the Department. All the workmen concerned in the dispute are Class-IV employees for which sponsorship from Employment Exchange is not required. The work performed by them are essential. The so-called contract system is a sham one. The overall control of the workmen including administrative control remained with the Department. The alleged Contractors are regular staff of the Department. They engage the workers, supervise the work, take their attendance and claim and pay their wages. There are regular sanctioned posts for regularizing the workmen concerned in the case. The BSNL is an establishment as per Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act. The concerned workmen having completed 480 days of work in a period of 24 calendar months should be made permanent. An Award may be passed holding that the workmen are entitled to regular absorption in the service of the establishment from the date of their joining, together with continuity of service and attendant benefits.

3. The Respondent has filed Counter Statement contending as below:

The petitioner has no locus-standi to espouse the cause of persons who are not employees of BSNL. The petitioner is not a recognized union. The subject-matter of the claim does not relate to the service conditions of any of the employees of BSNL. As such the claim is not maintainable. The Contractors have not been impleaded as parties. So the dispute is bad for non-joinder of necessary parties. It is not correct to state that the concerned workmen are doing work of the same nature as done by regular employees, that the work is perennial in nature, that there is direct control and supervision by the Respondents, that the Contractors are the Officers of BSNL, etc. Though the petitioner has admitted that the workmen are contract labourers they are described as casual labourers doing the work of Class-IV employees. These are mutually inconsistent pleas. In the case of contract labourers there is no supervision or control by the principal employers. The petitioner having admitted that the concerned workmen are contract labourers, the question of their absorption or regularization do not arise. The Respondents have not been prevented from engaging contract labour. The Respondents do not know about the details of the concerned workmen. It is the Contractors who do the work and they only know about the details of their workmen. If the workmen have worked for more than 480 days they are to claim permanency with the Contractors and not with the Respondents. The petitioner is not entitled to any relief.

4. The petitioner has filed Claim Statement on behalf of the workmen involved in ID 355/2004 raising the same contentions as that in ID 354/2004. The workmen involved in this case are said to be doing Line and Cable Work. The Respondents have filed Counter Statement raising contentions similar to that in ID 354/2004.

5. Both IDs being under the same SSA and the parties to both disputes being the same, the two disputes were tried jointly. Evidence was recorded in ID 355/2004 and this was adopted as the evidence in the other ID also.

6. The evidence consists of oral evidence of WW1, WW2 and MW1 and MW2 and documents marked as Ext.W1 to Ext.W11 and Ext.M1 to Ext.M12.

7. **The points for consideration in both IDs are:**

- (i) Whether the claim of the Petitioner Union for absorption of the workmen is justified?
- (ii) What if any is the relief to which they are entitled?

The Points

8. The dispute involved in ID 354/2004 is in respect of 27 workmen whose names and other details are given in the annexure to the schedule of reference of the said ID. These workmen are said to be doing Housekeeping and Cleaning work in the Offices of BSNL at Salem. The dispute in ID 355/2004 is in respect of 138 workers who are said to be doing Line and Cable work under Salem Division of BSNL. According to the petitioner, though the workmen are purportedly working under a contract system the contracts are sham and nominal. They are directly under the control and supervision of Department of Telecom earlier, and subsequently under BSNL. The so-called Contractors are said to be regular employees of the Respondents. According to the petitioner control of the workmen always remained with the officials of the Respondents. The petitioner has claimed absorption of the workmen in BSNL on the basis that the contract system under which they were working is sham and also on the ground that they are entitled to permanency as they have completed more than 480 days of work within 24 calendar months.

9. One of the workmen has been examined as WW1 to substantiate the case of the petitioner. He has stated that he is giving evidence on behalf of all other workmen involved in ID 355/2004 and also those involved in ID 354/2004. This witness has stated in his affidavit that the contract system under which they are working is sham. He has also given the names of the officials of the establishment who were extracting work from the concerned workmen. According to this witness he has started to work in the Department of Telecom in the year 1995.

10. It is to be seen whether the documents available support the case put forth by WW1 in his evidence. Ext.W1 is described as particulars regarding the work. The first page shows the Muster Roll, Year, etc. However, it does not contain any name. This is the case with the second page also. Under Ext.W1 (series) there is one more document described as Attendance Register. This contains some dates and initial or signature of the official alongwith the initial or signature of the workman. However, the names of none of the workman appear in this document. Ext.W2 is an experience certificate in respect of one Bhoopathy. This certificate issued in 2002 states that he has experience of three years. Ext.W3 is a receipt issued by one Veerasamy for certain dates in May 2005. There is another receipt pertaining to December, 2003 also. Ext.W4 is a Stores Issue Slip issued in respect of Muthusamy in 2004. There are two more such receipts in respect of two other workmen for the year 2004 and 2005. Ext.W5 contains a certificate stating that one Sampath has worked for 305 days from 11/73 to 3/77. The above documents are not at all sufficient to establish the case of the petitioner. The remaining documents are only replica of the annexure to the schedule of reference, bye-laws and resolution of the Union. So no material is available to substantiate the case of the petitioner. The petitioner is not entitled to any relief in either of the IDs.

In view of the above discussion, both IDs 354/2004 and 355/2004 are answered against the petitioner. Awards are passed accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 22nd March, 2017)

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st Party/Petitioner Union : WW1, Sri R. Matheswaran
WW2, Sri K. Srinivasan
For the 2nd Party/Respondents : MW1, Sri V.Varadharajan
MW2, Sri K. Ganesan

Documents Marked:

On the petitioner's side

Ex.No.	Date	Description
Ext.W1Series	-	Working Days Particulars Attendance register (I.D.No.354/2004)
Ext.W2	12.11.2002	Experience Certificate
Ext.W3	-	Payment Receipts
Ext.W4	-	Store Issue Slip Series
Ext.W5	28.04.2004	Identity Slip
Ext.W6	-	Service Certificate
Ext.W7	-	Annexure to 2(K) Petition (I.D.No.355/2004)
Ext.W8	-	Annexure to 2(K) Petition (I.D.No.354/2004)
Ext.W9	-	Bye-laws of the Union
Ext.W10	30/31 Oct'2001	Resolution of the union
Ext.W11	21.03.2006	Lok Sabha Admitted Provisional Starred Question Dy. NO.10145 for 19.12.2005 by Shri Ganesh Singh regarding regularization of contract Workers.

On the Management's side

Ext.No.	Date	Description
Ext.M1	24.12.1992	Copy of DOT, New Delhi letter no. 29-18/91-SRT dated 24.12.1992 addressed to CGMR, Calcutta Phones and Endorsement No. E.1/107/B1gs/92-93/3 dated TR-1 the 02.02.1993
Ext.M2	30.03.1985	Office of the Director General Posts & Telegraphs regarding ban order for recruitment of casual labours.
Ext.M3	25.07.1989	Letter from Chief General Manager, Telecommunications, Tamil Nadu Circle, Madras-600002 regarding eligibility of casual labour to become office bearer of the Unions
Ext.M4	-	Copy of Page 137 of Appendix 3 from P&T Manual Vol.III
Ext.M5	-	Copy of Appendix No. 3 – Preservation of Records
Ext.M6	05.11.2001	Letter from BSNL to All Chief General Managers regarding adoption of the existing Appointing Authorities in respect of absorption of Group C and D staff in BSNL
Ext.M7	-	Copy of Appendix 13A at Page 426 of Financial & Hand Book of P&T Rules which deals with RRule-331
Ext.M8	-	Copy of letter from CGM, Telecom, Chennai to all Subordinate Offices

Ext.M9	18.09.2005	Copy of the agreement entered into between BSNL and M/s. Force I Security Service
Ext.M10	24.05.2002	Certificate of Registration Contract Labour (Regulation and Abolition) Act,1970 and Central Rules,1971-Grant-reg
Ext.M11	02.05.2005	Licence granted to M/s. Force I Security Service
Ext.M12	22.06.1995	Copy of the document of prescribed procedure to be followed by the Department in the appointment of Group “D” employees category.

नई दिल्ली, 25 अप्रैल, 2017

का.आ. 1132.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार महाप्रबंधक, बीएसएनएल, टेलीफोन भवन, थंजावुर एवं उनके कर्मचारी के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 384/2004, 385/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.04.2017 को प्राप्त हुआ था।

[सं. एल-40011/51/2003-आईआर (डीयू),

सं. एल-40011/52/2003-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 25th April, 2017

S.O. 1132.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 384/2004, 385/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in Annexure, in the industrial dispute between the employers in relation to the General Manager, BSNL, Telephone Bhawan, Thanjavur and their workman, which was received by the Central Government on 03.04.2017.

[No. L-40011/51/2003-IR (DU),

No. L-40011/52/2003-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 22nd March, 2017

Present : K.P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute Nos. 384 and 385 of 2004

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Bharat Sanchar Nigam Ltd. and their workman)

BETWEEN :

The Circle Secretary
BSNL Employees Union
21/10, RK Srinivas Apartments
Bharatiyar 1st Street
Pazhavanthangal
Chennai-600114

: 1st Party/Petitioner Union

AND

The General Manager
BSNL, Telephone Bhawan, Trichy Road
Thanjavur

: 2nd Party/Respondent

Appearance:

For the 1st Party/Petitioner Union : M/s. K.M. Ramesh, Advocates

For the 2nd Party/Respondents : Sri D. Simon, Advocate

S.No.	Industrial Dispute No.	Reference No.
1.	384/2004	L-40011/51/2003-IR (DU) dated 06.07.2004
2.	385/2004	L-40011/52/2003-IR (DU) dated 06.07.2004

COMMON AWARD

The Central Government, Ministry of Labour & Employment referred the IDs mentioned above to the Industrial Tribunal, Chennai for adjudication. The IDs were numbered as ID 384 and 385 of 2004 respectively. In both IDs the parties have entered appearance through the counsel and filed claim and counter statement respectively.

The schedule mentioned in the respective orders are:

ID 384/2004

“Whether the demand of the BSNL Employees Union from the management of BSNL, Thanjavur for regularization/absorption of Sri S. Sivanandam and 6 others contract labour (as per the Annexure) is legal and justified? If so, to what relief the workmen are entitled to and from which date?”

ID 385/2004

“Whether the demand of the BSNL Employees Union from the management of BSNL, Thanjavur for regularization/absorption of Sri S. Sampath and 16 others contract labour (as per the Annexure) is legal and justified? If so, to what relief the workmen are entitled to and from which date?”

3. The averments in ID 384/2004 are as below:

The petitioner is a Registered Trade Union having substantial number of permanent workmen working in BSNL as its members. The dispute is raised on behalf of workmen working in the Office of Telecommunications, BSNL, Thanjavur. These workmen are doing Line Work, etc. These workmen are working directly under the control and supervision of BSNL. They are doing the very same work carried out by the permanent employees of the Department. The work done by them is perennial in nature. The workmen cannot be treated as contract labour but have to be treated as part and parcel of the regular service of the Department. All the workmen concerned in the dispute are Class-IV employees for which sponsorship from Employment Exchange is not required. The work performed by them are essential. The so-called contract system is a sham one. The overall control of the workmen including administrative control remained with the Department. The alleged Contractors are regular staff of the Department. They engage the workers, supervise the work, take their attendance and claim and pay their wages. There are regular sanctioned posts for regularizing the workmen concerned in the case. The BSNL is an establishment as per Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act. The concerned workmen having completed 480 days of work in a period of 24 calendar months should be made permanent. An Award may be passed holding that the workmen are entitled to regular absorption in the service of the establishment from the date of their joining, together with continuity of service and attendant benefits.

4. The Respondent has filed Counter Statement contending as below:

The petitioner has no locus-standi to espouse the cause of persons who are not employees of BSNL. The petitioner is not a recognized union. The subject-matter of the claim does not relate to the service conditions of any of the employees of BSNL. As such the claim is not maintainable. The Contractors have not been impleaded as parties. So the dispute is bad for non-joinder of necessary parties. It is not correct to state that the concerned workmen are doing work of the same nature as done by regular employees, that the work is perennial in nature, that there is direct control and supervision by the Respondents, that the Contractors are the Officers of BSNL, etc. Though the petitioner has admitted that the workmen are contract labourers they are described as casual labourers doing the work of Class-IV employees. These are mutually inconsistent pleas. In the case of contract labourers there is no supervision or control by the principal employers. The petitioner having admitted that the concerned workmen are contract labourers, the question of their absorption or regularization do not arise. The Respondents have not been prevented from engaging contract labour. The Respondents do not know about the details of the concerned workmen. It is the Contractors who do the work and they only know about the details of their workmen. If the workmen have worked for more than 480

days they are to claim permanency with the Contractors and not with the Respondents. The petitioner is not entitled to any relief.

5. ID 385/2004 is also a dispute on behalf of workmen working in the Office of the BSNL, Thanjavur. These workmen are said to be doing cleaning and sweeping work. The petitioner has raised contentions as that of the contentions raised in ID 384/2004 in this ID as well and has claimed absorption of the concerned workmen in BSNL.

6. The Respondent has filed Counter Statement in ID 385/2004 raising contentions similar to that raised in ID 384/2004.

7. The two IDs being from Thanjavur SSA and the parties being the same they were tried jointly. Evidence was recorded in ID 384/2004.

8. The evidence consists of oral evidence of WW1 and WW2 and MW1 and documents marked as Ext.W1 to Ext.W6 and Ext.M1 to Ext.M12.

9. **The point for consideration in both cases is:**

Whether the concerned workmen are entitled to absorption as claimed?

The Point

10. The two disputes are raised by the Petitioner Union on behalf of the workmen working in Thanjavur SSA of BSNL. The workmen concerned in ID 384/2004 are said to be doing Line Work and the workmen concerned in ID 385/2004 are said to be doing cleaning and sweeping work. There are 7 workmen involved in ID 384/2004 and 17 workmen involved in ID 385/2004. The names and other details including the date of joining of the concerned workmen are given in the annexure to the schedule of reference of the respective IDs. The Petitioner Union has raised similar contentions in both IDs. It is stated that though the workmen concerned are said to be working as contract labourers they are actually under the direct control and supervision of the officials of the Respondent and the so-called contract system is only a camouflage. It is further stated that the work done by these workmen is perennial in nature and they have been doing work for a long time. It is also stated that the workmen are entitled to be absorbed in the Respondent establishment also because all of them have completed 480 days of work within a period of 24 calendar months and are entitled to be made permanent as per Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act.

11. One of the workman named in the annexure to ID 385/2004 has given evidence as WW1. His evidence is on behalf of all the workmen concerned in ID 384 as well as ID 385/2004. He has stated in the Proof Affidavit filed by him that they were employed in Thanjavur Telecom SSA and they are working in different places under this SSA. He has reiterated the case in the Claim Statement that all of them were under the control and supervision of the officials of the Respondent and were doing work which is perennial in nature. He has also claimed that the so-called contract system is only a camouflage. According to him, the Contractors are all employees of the Respondent. WW1 has also given the names of the officials of the Respondent who are said to have extracted work from the concerned workmen. He has claimed that all the workmen are entitled to be absorbed in the service of the Respondent.

12. The case regarding other workmen other than WW1 has to be rejected at the outset itself. WW1 has admitted during his cross-examination that the petitioner has not produced any documents pertaining to other workmen involved in the two IDs. None of these workmen have come forward to justify their case also. In the absence of any oral or documentary evidence it is not possible to accept the case on behalf of these persons that they have been working for the Respondent for a long time and are entitled to be absorbed in the establishment.

13. So far as the case of WW1 is concerned, some documents are available. These are a series of payment vouchers marked as Ext.W1. The vouchers are of the dates starting from 01.01.1996 and reaching upto March 2000. The Respondent has not raised any dispute regarding the authenticity of these vouchers. The only question put during cross-examination of MW1 regarding these vouchers is that these are not continuous. Questions were put only regarding absence of vouchers in between certain vouchers produced. It could be seen from these vouchers that WW1 had been working for the establishment at least from 1996 and was receiving payment directly from the Respondent. He seems to have been placed as a contract worker after the dispute was raised. He has stated during his cross-examination in 2005 that he had been working under a Contractor for 11 months. It is clear that he continued to work for the Respondent until the dispute was raised and even after that. Probably the attempt of the Respondent was to make out that he was a contract worker throughout, by placing him as a contract worker at the late stage. Even if there was any contract it is to be treated as a sham one.

14. MW1, the Divisional Engineer of BSNL, Thanjavur SSA has been examined by the Respondent to prove that it was not taking workmen directly but getting work done only through contract. MW1 has produced Ext.M2 to show that

the Government has issued a ban on recruitment of casual labourers. This ban order is seen issued in 1985. However, in spite of this persons seen to have been engaged directly, as could be made out from the documents. Otherwise there was no necessity for Ext.W1 vouchers. In any case WW1 has been working for a long time, at least from 1996 and had been continuously working. He was doing work which was perennial in nature. The control and supervision always rested with the Respondent. Otherwise they would not have issued the vouchers of payment. So the case that the contract, if any is a sham one has to be accepted.

15. Apart from the above is the fact that a person who has been working directly should not have been converted into a contract worker. The counsel for the petitioner has referred to the decision of the Apex Court in **WORKMEN OF FOOD CORPORATION OF INDIA VS. FOOD CORPORATION OF INDIA** reported in AIR 1985 SC 670 where it was held that a person who is under direct employment cannot be converted to a contract employee. It was a case where the Food Corporation had engaged several workmen directly but subsequently a Contractor was inducted and these workmen were brought under him. The dictum was laid down in this context. The Apex Court has stated in **HUSSAINBHAI VS. ALATH FACTORY THOZHILALI UNION** reported in AIR 1978 SC 1410 that the presence of intermediate Contractors with whom the workers have immediate or direct relationship *ex contractu* is of no consequence when on lifting the veil or looking at the conspectus of factors governing employment will discern the naked truth, though draped in different perfect arrangement, that the real employer is the Management and not the immediate Contractor. In the present case, it is very much clear that the contract system if any under which the workmen were working was only a sham and nominal one and they were really working under the Respondents itself.

16. MW1, the Divisional Engineer of Thanjavur SSA has been examined on behalf of the Respondent. He has stated that Ext.M1 is the notification which would show that BSNL Employees Union is given recognition only to represent the matters of its own members. According to the Respondent the Petitioner Union has no locus-standi to raise the dispute. WW2, an official of the Union has been examined to meet this case. Ext.W4 the bye-laws of the Union and Ext.W5 the resolution passed by the Union on 30th and 31st October, 2001 are marked through this witness. WW2 has stated that as per the bye-laws of the Union it is entitled to espouse the cause of BSNL employees in general. Apart from that it has decided to espouse the cause of all workmen who had not been regularized, by Ext.W5 resolution. So the contention that the Union is not competent to espouse the cause of the workmen will not hold good. WW1 been working for the Respondent for several years. So he is entitled to be absorbed in service as claimed by him. Accordingly an Award is passed as below:

WW1, R. Rajendran, S.No.3 shall be deemed to have been absorbed in the service of the Respondent in his present position from the date on which the dispute is raised. He is entitled to the difference in the wages due to him consequent to such absorption. The arrears shall be paid within two months of the publication of the Award. In default it will carry interest at the rate of 6% per annum.

ID 384/2004 is answered against the petitioner.

An award is passed accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 22nd March, 2017)

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st Party/Petitioner Union : WW1, Sri R. Rajendran
WW2, Sri K. Srinivasan
For the 2nd Party/Respondents : MW1, Sri K.Chandramohan

Documents Marked:

On the petitioner's side

Ex.No.	Date	Description
Ext.W1	-	Housekeeping Payment Voucher
Ext.W2	-	Annexure to 2(k) petition (I.D.No.385/2004)
Ext.W3	-	Annexure to 2(k) petition (I.D.No.384/2004)
Ext.W4	-	Bye-laws of the Union
Ext.W5	30/31 Oct'2001	Resolution of the union

Ext.W6 21.03.2006 Lok Sabha Admitted Provisional Starred Question Dy. NO.10145 for 19.12.2005 by Shri Ganesh Singh regarding regularisation of contract Workers.

On the Management's side

Ext.No.	Date	Description
Ext.M1	24.12.1992	Copy of DOT, New Delhi letter no. 29-18/91-SRT dated 24.12.1992 addressed to CGMR, Calcutta Phones and Endorsement No. E.1/107/Blgs/92-93/3 dated TR-1 the 02.02.1993
Ext.M2	30.03.1985	Office of the Director General Posts & Telegraphs regarding ban order for recruitment of casual labours.
Ext.M3	25.07.1989	Letter from Chief General Manager, Telecommunications, Tamil Nadu Circle, Madras-600002 regarding eligibility of casual labour to become office bearer of the Unions
Ext.M4	-	Copy of Page 137 of Appendix 3 from P&T Manual Vol.III
Ext.M5	-	Copy of Appendix No. 3 – Preservation of Records
Ext.M6	05.11.2001	Letter from BSNL to All Chief General Managers regarding adoption of the existing Appointing Authorities in respect of absorption of Group C and D staff in BSNL
Ext.M7	-	Copy of Appendix 13A at Page 426 of Financial & Hand Book of P&T Rules which deals with Rule-331
Ext.M8	-	Copy of letter from CGM, Telecom, Chennai to all Subordinate Offices
Ext.M9	20.11.2004	Copy of the agreement entered into between BSNL and M/s. Pudukkottai Security Service Contractor.
Ext.M10	01.05.2003	Certificate of Registration, Form II (See Rule -18 (1)
Ext.M11	22.06.1995	Copy of the document of prescribed procedure to be followed by the Department in the appointment of Group "D" employees category.
Ext.M12	30.06.2006	Online Consultancy Services.

नई दिल्ली, 25 अप्रैल, 2017

का.आ. 1133.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मुख्य महाप्रबंधक, बीएसएनएल, तमिलनाडु सर्किल, चेन्नई व अन्य एवं उनके कर्मचारी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 353/2004, 388/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.04.2017 को प्राप्त हुआ था।

[सं. एल-40011/46/2003-आईआर (डीयू),

सं. एल-40011/55/2003-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 25th April, 2017

S.O. 1133.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 353/2004, 388/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in Annexure, in the industrial dispute between the employers in relation to the Chief General Manager, BSNL, Tamilnadu Circle, Chennai and others and their workman, which was received by the Central Government on 03.04.2017.

[No. L-40011/46/2003-IR (DU),

No. L-40011/55/2003-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
CHENNAI**Wednesday, the 22nd March, 2017**Present :** K.P. PRASANNA KUMARI, Presiding Officer**Industrial Dispute No. 388 and 353 of 2004**

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Bharat Sanchar Nigam Ltd. and Another and their workman]

BETWEEN :

The Circle Secretary : 1st Party/Petitioner Union
BSNL Employees Union
No. 3/71, 4th Street, Raghava Nagar
Madipakkam
Chennai-600091

AND

1. The Chief General Manager : 2nd Party/1st Respondent
BSNL, Tamilnadu Circle, Anna Salai
Chennai-600002
2. The General Manager, Telecom : 2nd Party/2nd Respondent
BSNL, 1, Seerangapalayam West
Salem-636007

Appearance:

For the 1st Party/Petitioner Union : M/s. K.M. Ramesh, Advocates
For the 2nd Party/1st & 2nd Respondents : Sri D. Simon, Advocate

S.No.	Industrial Dispute No.	Reference No.
1.	353/2004	L-40011/46/2003-IR (DU) dated 19.05.2004
2.	388/2004	L-40011/55/2003-IR (DU) dated 09.07.2004

COMMON AWARD

The Central Government, Ministry of Labour & Employment referred the IDs mentioned above to the Industrial Tribunal, Chennai for adjudication. The IDs were numbered as ID 388 and 353 of 2004 respectively. In both IDs the parties have entered appearance through the counsel and filed claim and counter statement respectively.

The schedules mentioned in the respective orders are:

ID 388/2004

Whether the demand of the Union for absorption of 7 workers (list enclosed) engaged through Contractors by the General Manager, BSNL, Salem as Telegraph Messenger is justified? If not, to what relief they are entitled to?"

ID 353/2004

Whether the demand of the Union for absorption Sri M. Senthilkumar, S/o L. Muthaiyan Molipalli workman engaged through Contractors by the General Manager, BSNL Salem as Driver is justified? If not, to what relief the workman is entitled?"

2. The averments in the Claim Statement filed by the petitioner in ID 388/2004 are as below:

The petitioner is a Registered Trade Union having substantial number of permanent workmen working in BSNL as its members. The dispute is raised on behalf of workmen working in the Office of BSNL, Salem. They are working as Telegraph Messengers. These workmen are working directly under the control and supervision of BSNL. They are doing the very same work carried out by the permanent employees of the Department. The work done by them is perennial in nature. The workmen cannot be treated as contract labour but have to be treated as part and parcel of the regular service of the Department. All the workmen concerned in the dispute are Class-IV employees for which sponsorship from Employment Exchange is not required. The work performed by them are essential. The so-called contract system is a sham one. The overall control of the workmen including administrative control remained with the Department. The alleged Contractors are regular staff of the Department. They engage the workers, supervise the work, take their attendance and claim and pay their wages. There are regular sanctioned posts for regularizing the workmen concerned in the case. The BSNL is an establishment as per Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act. The concerned workmen having completed 480 days of work in a period of 24 calendar months should be made permanent. An Award may be passed holding that the workmen are entitled to regular absorption in the service of the establishment from the date of their joining together with continuity of service and attendant benefits.

3. The Respondents have filed Counter Statement contending as below:

The petitioner has no locus-standi to espouse the cause of persons who are not employees of BSNL. The petitioner is not a recognized union. The subject matter of the claim does not relate to the service conditions of any of the employees of BSNL. As such the claim is not maintainable. The Contractors have not been impleaded as parties. So the dispute is bad for non-joinder of necessary parties. It is not correct to state that the concerned workmen are doing work of the same nature as done by regular employees, that the work is perennial in nature, that there is direct control and supervision by the Respondents, that the Contractors are the Officers of BSNL, etc. Though the petitioner has admitted that the workmen are contract labourers they are described as casual labourers doing the work of Class-IV employees. These are mutually inconsistent pleas. In the case of contract labourers there is no supervision or control by the principal employers. The petitioner having admitted that the concerned workmen are contract labourers, the question of their absorption or regularization does not arise. The Respondents have not been prevented from engaging contract labour. The Respondents do not know about the details of the concerned workmen. It is the Contractors who do the work and they only know about the details of their workmen. If the workmen have worked for more than 480 days they are to claim permanency with the Contractors and not with the Respondents. The petitioner is not entitled to any relief.

4. ID 353/2004 is a dispute raised by the Union on behalf of Senthil Kumar who is said to have been engaged as Driver under BSNL, Salem. The contentions raised in the Claim Statement on behalf of this workman are the same as that in ID 388/2004. Absorption of the workman is claimed on the basis that the contract system under which he is working is only a camouflage and also that he had completed more than 480 days of work within a period of 24 calendar months.

5. The two cases were tried jointly as both cases come under Salem SSA and the parties being the same. Evidence is seen recorded in ID 388/2004.

6. The evidence in the case consists of oral evidence of WW1 & WW2 and MW1 and MW2 and documents marked as Ext.W1 to Ext.W10 and Ext.M1 to Ext.M12.

7. **The points for consideration are:**

- (i) Whether the demand of the Petitioner Union for absorption of the workmen involved in the two IDs are justified?
- (ii) What are the reliefs, if any, to which the concerned workmen are entitled?

The Points

8. The Petitioner Union has raised the dispute in ID 388/2004 on behalf of 78 workers whose names and other details are appended to the schedule of reference. These workmen are said to be working as Telegraph Messengers under BSNL Salem. The workman involved in ID 353/2004 is said to be working as Driver. According to the Petitioner Union all the workmen have completed more than 480 days of work within a period of 24 calendar months. It is also stated that the contract system under which they are working are sham. The petitioner has claimed absorption of the workmen in the regular establishment on these grounds.

9. A workman involved in ID 388/2004 has been examined to establish the case that all the workmen are entitled to absorption. WW2 is the Circle Treasurer of the Petitioner Union examined to show that the Union has got locus-standi to espouse the case of the workmen.

10. WW1 has stated in his affidavit that the workmen involved in ID 388/2004 are employed in Salem SSA and were working in different Telephone Exchanges under the SSA. He has further stated that all of them were delivering telegrams even prior to the formation of BSNL and Department of Telecom has been paying wages by wage receipts. Senthil Kumar, the workman involved in ID 353/2004 was driving vehicles belonging to BSNL. WW1 has reiterated the case in the Claim Statement that all the workmen have completed 480 days of continuous service in a period of 24 calendar months. He has further stated in his affidavit that all of them are doing work which is perennial in nature. Directions regarding work were given by the officials of BSNL. They were always under the control and supervision of BSNL and prior to that the Department of Telecom. The so-called Contractor was always a regular employee of the Department. The contract system is said to be sham. He has also stated that after the dispute was raised BSNL was asking him to sign receipts in different names. According to him all the workmen are entitled to be absorbed in the establishment.

11. Ext.W5 is the sole document produced to prove the case of Senthil Kumar involved in ID 353/2004. It is to be seen if this is sufficient to justify his case for absorption. In fact Ext.W5 consists of several communications by the Sub-Divisional Officer of BSNL, Tiruchengode asking to arrange for supply of diesel for a jeep belonging to the Department. The copy of a diesel bill also is available in each of the pages containing the communication. This diesel bill gives the name of Senthil Kumar, the concerned workman also. There could be no doubt on going through these bills that Senthil Kumar must have been working for the establishment. However, all these communications are of the period starting from July 2002. Communications upto April 2003 are available in this. It is not known from which date Senthil Kumar had started to work for the establishment. The Claim Statement does not give any indication of this. It is not there in the schedule of reference also. The concerned workman himself has not come forward to give evidence. There is only the evidence given by WW1 that Senthil Kumar has been working continuously. However, evidence of his engagement from the month of July 2002 only are available as per Ext.W5. Even these are not on day to day basis but only on intermittent dates, sometimes twice in a month, sometimes once in a month, etc. Ext.W5 would not show if he had been working continuously and had completed more than 480 days of work. In any case having admitted that the engagement is on contract basis the workman will not be entitled to permanent status with BSNL under Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act. His engagement as seen from Ext.W5 is probably only a few months before the dispute was raised. Though the copy of the petition given by the petitioner before the Assistant Labour Commissioner is not available the schedule of reference would show that the reference was in 2003. The failure report itself is in September 2003. So the dispute must have been raised some months before this. So there is nothing to show that Senthil Kumar has been working for the establishment for a long time. So the case of the petitioner that he was made to work under a sham contract for a long time, that he was doing work of a perennial nature, etc. could not be accepted in the case of Senthil Kumar. So the Petitioner Union is not entitled to any relief in respect of this workman.

12. So far as WW1 is concerned the petitioner has produced several documents to show that he was there in the establishment at least from the year 1997. Ext.W2 (series) are documents described as Telegram Delivery Dockets/Messenger Delivery Receipts. Ext.W2 (i) is the delivery receipts showing that WW1 was working for Department of Telecommunications even in July 1997. Each telegram delivery docket is for one month. Such dockets for the period upto December, 1999 are seen produced. All these contain the name of WW1 and also the number of telegram, signature of the receiver, etc. These are in the booklet of the Department of Telecommunications and contains its seal also at every page. Each page contains details regarding work done in a day. These documents are sufficient to show that WW1 had been working for the establishment at least from July 1997 and had been continuously working. Ext.W1 is a certificate showing that WW1 had been sent for election duty in October 1999. Ext.W3, apart from delivery dockets starting from June 1997, contains receipts for payment of wages to WW1 as well. In the receipts of 1999 the work done is described as on contract basis, in deviation to the description given earlier. However, it is clear from these receipts that the department was directly making payment to those who were engaged. The receipt contains the signature of the official in charge and is countersigned by another Officer, apart from the signature of WW1. Though described as on contract basis, payment was made directly by the department. The workmen themselves have been giving wage bills for the work done by them and those were approved by the department. Thus it could be seen that though in later times the work is described as on contract basis the workmen were treated as if they were workmen of the establishment. They were dealing directly with the establishment. They were directly under the control and supervision of the establishment. The payment receipts were issued directly by the establishment.

13. It is seen from the evidence of WW1 that he was still working for the establishment at the time when he gave evidence. He has stated during cross-examination that he is still working as Telegraph Messenger and was also doing Group "D" work. WW1 has stated during his evidence that he has joined the establishment on 01.04.1997. This seems

probable when his evidence and the documents produced on his behalf are taken into account. He was continuously working in the establishment and was doing the same kind of work continuously. Ext.W2 (series) would show that he was working on all days continuously. Thus, it could be seen that he was doing work of perennial in nature at least from July 1997 and is still continuing to work in the establishment. The contract, if any resorted to by the Respondents must be a sham one intended to deny permanency to the employee.

14. So far as the other workmen involved in ID 388/2004 are concerned no documents are available at all. None of the concerned workman have come forward to give evidence also. So there is absolutely no proof to substantiate the claim on their behalf.

15. The counsel for the Respondents have referred to the decision of the Apex Court in Uma Devi's case reported in 2006 4 SCC 1 to contend that there cannot be regularization of the workmen as they were engaged without following due process of selection as envisaged in constitutional scheme. However, the dictum laid down in the Uma Devi's Case has been subsequently explained in the case MAHARASHTRA STATE ROAD TRANSPORT CORPORATION VS. CASTERIBE RAJYA PARIVAHAN KARMACHARI SANGHATHANA reported in 2009 2 SCC (L&S) 513. It has been held in the above decision that the powers of the Industrial and Labour Courts were not under consideration in Uma Devi case and issues like one pertaining to unfair labour practice was not at all referred to, considered or decided in Uma Devi case. Unfair labour practice on the part of the employer in engaging them as Badlis, casuals or temporaries and to continue them as such for years with the object of depriving them of the status and privilege of permanent employees as provided in Item-6 of schedule IV and the power of Industrial and Labour Courts under Section-30 of the Act did not fall for adjudication or consideration before the Constitution Bench, it was held. It was also held that Uma Devi does not denude the Industrial and Labour Courts of the statutory power to order permanency of the workers who have been victims of unfair labour practice on the part of the employer.

16. When considered in the light of the above proposition of law it could be seen that WW1 had been made to work continuously in the establishment under the guise of contract worker and is entitled to be regularized in the establishment. The establishment had been extracting work from him at a very low rate of wages for a long time. They should not be allowed to continue it. Even now, after years of work, he continues to work as a workman with very little amount as wages when compared to regular workers. There is no justification for this.

17. MW1, the Divisional Engineer, BSNL, Salem has been examined on behalf of the Respondent. He has stated that Ext.M1 is the notification which would show that BSNL Employees Union is given recognition only to represent the matters of its own members. According to the Respondent the Petitioner Union has no locus-standi to raise the dispute. WW2, an official of the Union has been examined to meet this case. Ext.W8 the bye-laws of the Union and Ext.W9 the resolution passed by the Union on 30th and 31st October, 2001 are marked through this witness. WW2 has stated that as per the bye-laws of the Union it is entitled to espouse the cause of BSNL employees in general. Apart from that it has decided to espouse the cause of all workmen who had not been regularized, by Ext.W9 resolution. So the contention that the Union is not competent to espouse the cause of the workmen will not hold good.

In view of the above discussion WW1 is entitled to be absorbed in the establishment as regular workman. Accordingly an Award is passed as below:

WW1, N. Saravanan, S.No. 2 in ID 388/2004 shall be deemed to have been regularized in the service of the Respondents in his then position from the date on which the dispute was raised. He will be entitled to the difference in pay consequent to such regularization. The arrears of pay due accordingly shall be paid to him within two months of the publication of the Award. The amount will carry interest @ 6% per annum from the date of the Award, if not paid in time.

ID 353/2004 is answered against the petitioner.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 22nd March, 2017)

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1 st Party/Petitioner Union	:	WW1, Sri N. Saravanan WW2, Sri K. Srinivasan
For the 2 nd Party/Respondents	:	MW1, Sri V.Varadharajan MW2, Sri K. Ganesan

Documents Marked:**On the petitioner's side**

Ex.No.	Date	Description
Ext.W1	-	Bonafide Certificate issued for election duty
Ext.W2 Series	01.07.1997 To 31.07.1997	Telegram delivery dockets/Messengers delivery receipt (23 Books)
Ext.W3	01.06.1997 To 31.12.1999	Delivery dockets and consolidated statement
Ext.W4	-	Pay receipts and ACG 17
Ext.W5	-	Respondent letter regarding supply of diesel
Ext.W6	-	Annexure to 2(K) Petition (I.D.No.388/2004)
Ext.W7	-	Annexure to 2(K) Petition (I.D.No.353/2004)
Ext.W8	-	Bye-laws of the Union
Ext.W9	30/31 Oct'2001	Resolution of the union
Ext.W10	21.03.2006	Lok Sabha Admitted Provisional Starred Question Dy. NO.10145 for 19.12.2005 by Shri Ganesh Singh regarding regularization of contract Workers.

On the Management's side

Ext.No.	Date	Description
Ext.M1	24.12.1992	Copy of DOT, New Delhi letter no. 29-18/91-SRT dated 24.12.1992 addressed to CGMR, Calcutta Phones and Endorsement No. E.1/107/Blgs/92-93/3 dated TR-1 the 02.02.1993
Ext.M2	30.03.1985	Office of the Director General Posts & Telegraphs regarding ban order for recruitment of casual labours.
Ext.M3	25.07.1989	Letter from Chief General Manager, Telecommunications, Tamil Nadu Circle, Madras-600002 regarding eligibility of casual labour to become office bearer of the Unions
Ext.M4	-	Copy of Page 137 of Appendix 3 from P&T Manual Vol.III
Ext.M5	-	Copy of Appendix No. 3 – Preservation of Records
Ext.M6	05.11.2001	Letter from BSNL to All Chief General Managers regarding adoption of the existing Appointing Authorities in respect of absorption of Group C and D staff in BSNL
Ext.M7	-	Copy of Appendix 13A at Page 426 of Financial & Hand Book of P&T Rules which deals with Rule-331
Ext.M8	-	Copy of letter from CGM, Telecom, Chennai to all Subordinate Offices
Ext.M9	18.09.2005	Copy of the agreement entered into between BSNL and M/s. Force I Security Service
Ext.M10	24.05.2002	Certificate of Registration Contract Labour (Regulation and Abolition) Act,1970 and Central Rules,1971-Grant-reg
Ext.M11	02.05.2005	Licence granted to M/s. Force I Security Service
Ext.M12	22.06.1995	Copy of the document of prescribed procedure to be followed by the Department in the appointment of Group "D" employees category.

नई दिल्ली, 25 अप्रैल, 2017

का.आ. 1134.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार निदेशक, नेशनल इंस्टीट्यूट ऑफ पब्लिक को-ऑपरेशन एंड चाइल्ड डेवलपमेंट, नई दिल्ली व अन्य एवं उनके कर्मचारी के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बेंगलूर के पंचाट (संदर्भ संख्या 14/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17.04.2017 को प्राप्त हुआ था।

[सं. एल-42025/03/2017-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 25th April, 2017

S.O. 1134.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 14/2012) of the Central Government Industrial Tribunal-cum-Labour Court, Bangalore as shown in Annexure, in the industrial dispute between the employers in relation to the Director, National Institute of Public Co-operation and Child Development, New Delhi and others and their workman, which was received by the Central Government on 17.04.2017.

[No. L-42025/03/2017-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
BANGALORE**DATED : 3rd April, 2017**PRESENT :** Shri V. S. RAVI, Presiding Officer**ID No. 14/2012****I Party**

Smt. Hanumakka,
W/o Rajanna, C/o Raghavendra Nilaya,
2nd Cross (Jeevan Pasha),
Municipal Layout
Chikaballapura Town.

Advocate for I Party: Mr. S. Siddalingaiah

II Party

1. The Director, National Institute of Public Co-operation and Child Development, New Delhi
2. The Regional Director, National Institute of Public Co-operation and Child Development, Southern Regional Centre, No. 18, Yelahanka New Town, Opp. Escorts Limited, Doddaballapura Road, Bangalore - 560064

Advocate for II Party: Mr. M. Swayamprakash

AWARD

1. Brief details mentioned in the claim statement are as follows:-

The I Party states that, there is no provision stipulated in the industrial law to terminate the services of the employee without any notice. The I Party states that, she is married and having 2 children and she is not able to maintain the day to day life. Further, she is not able to get any alternative employment in other department. The I Party states that, the II Party No. 2 terminated the service of the I Party illegally without confirming the services of the I party the II Party No.2 has no right to terminate the service of the I Party without prior permission from II Party No.1. Therefore, the II party humbly prays that this Court be pleased to:-

- a) Direct the II Party to consider the Hon'ble High Court order in W.P Order 17364/12 dated 20.06.2012 in Annexure-I and confirm and regularize the services of the I party in her original post.
- b) Direct the II Party to pay all the eligible benefits to the I Party as per the Labour Laws.

2. Brief details mentioned in the Counter statement are as follows:-

The II Party states that, the provisions of Industrial Dispute Act, 1947 do not apply and as such this Court has, therefore no jurisdiction to entertain this matter. The I.D is thus without force of law and needs to be dismissed as such on this ground only and it is pertinent to mention that the Institute has been brought within the purview of Central

Administrative Tribunal Vide Gazette Notification dated 22.04.2008 and, therefore, all service matters involving the Institute are under the jurisdiction of the same.

3. In the above mentioned facts and circumstances, an important and preliminary point arises for consideration, with regard to the above mentioned matter is as follows:-

“Whether this Tribunal lacks jurisdiction to try the present Matter?”

4. **POINT :-** In the present case, the I party has prayed to this Court be pleased to:-

- a) Direct the II Party to consider the Hon’ble High Court order in W.P Order 17364/12 dated 20.06.2012 in Annexure-I and confirm and regularizes the services of the I party in her original post.
- b) Direct the II Party to pay all the eligible benefits to the I party as per the Labour Laws.

Further, the I party, as per the memo dated 23.03.2017, prays this Court to permit to withdraw the case with liberty to file Application before the CAT in the interest of justice. Hence, it is crystal clear that as per the above mentioned reasons, this Tribunal lacks jurisdiction to try the present matter.

5. Further, taking into consideration the above mentioned points the I party cannot seek the reliefs, before this Tribunal. At the same time, this Tribunal is not expressing any opinion on other issues raised by both the sides, as this Tribunal lacks jurisdiction to entertain the present matter of this nature and also liberty is granted to the I party to raise the dispute before the proper, competent and appropriate Judicial Forum/Tribunal/Court within 30 days from the date of receipt of the present Award passed by this Tribunal, in the best interest of justice, equity and fair play, and the matter has to be disposed of. Accordingly, this point is answered. Hence, the following Award is passed:-

AWARD

This Tribunal has no jurisdiction to entertain the disputes raised by the I Party, particularly, in the light of the above mentioned points and the present matter suffers for want of jurisdiction before this Tribunal and liberty is given to the I party to raise the dispute before the proper, competent and appropriate Judicial Forum/ Tribunal/Court, within 30 days from the date of receipt of the present Award, by adopting the procedure known under the law, in the best interest of justice, equity, good conscience and fair play and this Tribunal has not expressed any opinion regarding the various other issues raised by both the parties, as the present matter has been disposed of, on the limited ground of jurisdiction point alone, and also, without costs, for the above mentioned facts and circumstances.

(Dictated, transcribed, corrected and signed by me on 3rd April, 2017)

V. S. RAVI, Presiding Officer

नई दिल्ली, 25 अप्रैल, 2017

का.आ. 1135.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार निदेशक, नेशनल इंस्टीट्यूट ऑफ पब्लिक को-ऑपरेशन एंड चाइल्ड डेवलपमेंट, नई दिल्ली व अन्य एवं उनके कर्मचारी के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बैंगलोर के पंचाट (संदर्भ संख्या 15/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17.04.2017 को प्राप्त हुआ था।

[सं. एल-42025/03/2017-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 25th April, 2017

S.O. 1135.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 15/2012) of the Central Government Industrial Tribunal-cum-Labour Court, Bangalore as shown in Annexure, in the industrial dispute between the employers in relation to the Director, National Institute of Public Co-operation and Child Development, New Delhi and others and their workman, which was received by the Central Government on 17.04.2017.

[No. L-42025/03/2017-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIUBNAL-CUM-LABOUR COURT,
BANGALORE**DATED : 3rd April, 2017**PRESENT : Shri V. S. RAVI, Presiding Officer****ID No. 15/2012****I Party**

Shri M. Chandrappa,
S/o Muniyappa,
Shettigere Village,
Doddajala Post,
Bangalore North Taluk
Bangalore Rural District

Advocate for I Party: Mr. S. Siddalingaiah

II Party

1. The Director, National Institute of Public Co-operation and Child Development, New Delhi
2. The Regional Director, National Institute of Public Co-operation and Child Development, Southern Regional Centre, No. 18, Yelahanka New Town, Opp. Escorts Limited, Doddaballapura Road, Bangalore - 560064

Advocate for II Party: Mr. M. Swayamprakash

AWARD

1. Brief details mentioned in the claim statement are as follows:-

The I party states that, there is no provision stipulated in the industrial law to terminate the services of the employee without any notice. The I Party states that, he is married and having 2 children and he is not able to maintain the day to day life. Further, he is not able to get any alternative employment in other department. The I party states that, the II Party No. 2 terminated the service of the I party illegally without confirming the services of the appellant. The II party No.2 has no right to terminate the service of the I party without prior permission from Respondent No.1. Therefore, the I party humbly prays that this Court be pleased to:-

- a) Direct the II party to consider the Hon'ble High Court order in W.P Order 17364/12 dated 20.06.2012 in Annexure-I and confirm and regularize the services of the appellant in his original post.
- b) Direct the II party to pay all the eligible benefits to the I party as per the Labour Laws.

2. Brief details mentioned in the Counter statement are as follows:-

The II Party states that, the provisions of Industrial Dispute Act, 1947 do not apply and as such this Court has, therefore no jurisdiction to entertain this matter. The I.D. is thus without force of law and needs to be dismissed as such on this ground only and it is pertinent to mention that the Institute has been brought within the purview of Central Administrative Tribunal Vide Gazette Notification dated 22.04.2008 and, therefore, all service matters involving the Institute are under the jurisdiction of the same.

3. In the above mentioned facts and circumstances, an important and preliminary point arises for consideration, with regard to the above mentioned matter is as follows:-

“Whether this Tribunal lacks jurisdiction to try the present Matter?”

4. **POINT :-** In the present case, the I party has prayed to this Court be pleased to:-

- a) Direct the II Party to consider the Hon'ble High Court order in W.P Order 17364/12 dated 20.06.2012 in Annexure-I and confirm and regularize the services of the I party in his original post.
- b) Direct the II party to pay all the eligible benefits to the I party as per the Labour Laws.

Further, the I party, as per the memo dated, 23.03.2017, prays this Court to permit to withdraw the case, with liberty to file Application before the CAT in the interest of justice. Hence, it is crystal clear that as per the above mentioned reasons, this Tribunal lacks jurisdiction to try the present matter.

5. Further, taking into consideration the above mentioned points the I party cannot seek the reliefs, before this Tribunal. At the same time, this Tribunal is not expressing any opinion on other issues raised by both the sides, as this Tribunal lacks jurisdiction to entertain the present matter of this nature and also liberty is granted to the I party to raise the dispute before the proper, competent and appropriate Judicial Forum/Tribunal/Court within 30 days from the date of receipt of the present Award passed by this Tribunal, in the best interest of justice, equity and fair play, and the matter has to be disposed of. Accordingly, this point is answered. Hence, the following Award is passed:-

AWARD

This Tribunal has no jurisdiction to entertain the disputes raised by the I Party, particularly, in the light of the above mentioned points and the present matter suffers for want of jurisdiction before this Tribunal and liberty is given to the I party to raise the dispute before the proper, competent and appropriate Judicial Forum/ Tribunal/Court, within 30 days from the date of receipt of the present Award, by adopting the procedure known under the law, in the best interest of justice, equity, good conscience and fair play and this Tribunal has not expressed any opinion regarding the various other issues raised by both the parties, as the present matter has been disposed of, on the limited ground of jurisdiction point alone, and also, without costs, for the above mentioned facts and circumstances.

(Dictated, transcribed, corrected and signed by me on 3rd April, 2017)

V. S. RAVI, Presiding Officer

नई दिल्ली, 25 अप्रैल, 2017

का.आ. 1136.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार महाप्रबंधक, ग्रे आयरन फाउंड्री, जबलपुर एवं उनके कर्मचारी के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संख्या सीजीआईटी/एलसी/आर/56/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17.04.2017 को प्राप्त हुआ था।

[सं. एल-14011/48/2000-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 25th April, 2017

S.O. 1136.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (No. CGIT/LCR/56/2001) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in Annexure, in the industrial dispute between the employers in relation to the General Manager, Grey Iron Foundry, Jabalpur and their workman, which was received by the Central Government on 17.04.2017.

[No. L-14011/48/2000-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR**

NO. CGIT/LC/R/56/2001

Shri Sanjay Kumar Choudhary
S/o Shri Mahendra Choudhary,
Ex. Photographer Lab. GIF, Jabalpur
R/o H.No.418, Choudhary Niwas,
Behind Kotwali Hanumantal Road,
Jabalpur

...Workman

Versus

General Manager,
Grey Iron Foundry,
Jabalpur

...Management

AWARD

Passed on this 31st day of March, 2017

1. As per letter dated 9-2-2001 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-14011/48/2000/IR(DU). The dispute under reference relates to:

“Whether the action of the management of Grey Iron Foundry in awarding compulsory retirement punishment w.e.f. 22-6-95 to Shri Sanjay Kumar Choudhary ex-photographer is legal and justified? If not, to what relief the workman is entitled?”

2. After receiving reference, notices were issued to the parties. Ist party workman filed statement of claim at Page 3/1 to 3/3. Case of Ist party workman is that due to sudden sickness, he could not do his job during the period 5-10-93 to 18-1-94. That due to his absence during above said period on account of his sickness, chargesheet was issued on 8-1-94 alleging unauthorized absence for the period 5-10-93 to 8-1-94. That proper enquiry was not conducted before imposing punishment of compulsory retirement on 22-6-95. The order of punishment is illegal. Appeal filed by Ist party was not decided despite his reminders dated 22-12-95 , 13-3-96. It is reite3rated that the punishment of compulsory retirement imposed against him is illegal. He was not granted adequate compensation. On such ground, workman prays for setting aside order of compulsory retirement and claims consequential relief.
3. Management of 2nd party filed Written statement at page 5/1 to 5/6 opposing claim of Ist party. It is reiterated by 2nd party that the Ist party was employed on post of photographer w.e.f. 6-4-81. He was habitual absentee since beginning. Ist party remained unauthorisely absent from duty without intimation or sanctioned leave. He was given ample opportunity to improve himself. However no improvement was seen in his conduct. Ist party workman was irregular in attendance since 8-12-87. Management had taken lenient view giving him opportunity to improve . attendance particulars of Ist party are shown in para 4 of the Written Statement. It is reiterated that he was unauthorisely absent. Chargesheet was issued to Ist party on 8-1-94 for his unauthorized absence from 5-10-93. Ist party submitted reply. His reply was found unsatisfactory. The competent authority decided to conduct enquiry against him. Shri Khare was appointed as Enquiry Officer and Shri Bhattacharjee was appointed as Presenting Officer. Enquiry was fixed on 21-3-95. Ist party admitted charge against him. Workman was given opportunity of Defence Assistant. That on admission of charges given by Ist party, Enquiry Officer held him guilty of charges. Considering report submitted by Enquiry Officer, Ist party admitted charges. Charge was proved against workman. Punishment of compulsory retirement was imposed on 22-6-94. It is reiterated that chargesheet was issued under CCS Rule, enquiry was conducted. Punishment of compulsory retirement imposed on workman is legal.
4. Ist party filed rejoinder at Page 6/1 to 6/3 reiterating his contentions in statement of claim.
5. As per order dated 7-9-16, enquiry conducted against workman was found legal. Said order was also confirmed as per order dated 1-12-16.
6. Considering pleadings on record and findings on enquiry, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the misconduct alleged against workman is proved from evidence in Enquiry proceedings?	In Negative
(ii) Whether the punishment of compulsory retirement imposed against workman is proper and legal?	In Negative
(ii) If not, what relief the workman is entitled to?"	As per final order.

REASONS

7. Point No.1- As per order dated 7-9-16, 7-12-16, enquiry conducted against workman is found legal. Question remains whether charges alleged against workman of unauthorized absence are proved from evidence in Enquiry Proceedings. Chargesheet Exhibit W-1 admitted by management pertains to unauthorized absence from 5-10-93. Exhibit W-2 is medical certificate produced by Ist party pertaining to receiving treatment in Triveni Hospital from 5-10-93 to 15-1-94. Workman was reported fit to work from 17-1-94. Exhibit W-3 pertains to medical examination of Ist party and fitness certificate. The fitness certificate is produced at Exhibit W-4. Workman was found fit for duty from 19-1-94. Exhibit W-5 is punishment order. Ist party was compulsory retired. Exhibit W-6 is appeal memo, W-7 is letter by RPAD sent by Ist party to Additional Director, reiterating his grievances. Exhibit W-8 is copy of failure report. Copy of order dated 7-9-99 is also produced on record, appeal filed by Ist party was rejected on the ground that Ist party had unconditionally admitted the charges. Copy of order of reference dated 9-2-01 is also produced on record.
8. Management has produced document Exhibit M-1 is reply given to the chargesheet contending that he was absent from duty from 5-10-93 to 15-1-94 on account of illness. Medical certificate is produced at Exhibit M-2. Exhibit M-5 is order of appointing Enquiry Officer. Reply to the chargesheet given by Ist party is produced in Enquiry Proceedings. Ist party admitted absence from duty without any pressure but he had claimed that he suffered accident. His father was suffering from cancer and requested for leniency. The record of Enquiry Proceedings at page 16 shows workman unconditionally accepted charges. When workman had submitted medical certificate , the admission of

charges by Ist party is contrary to the record. When workman was suffering from illness, he suffered fracture. Charges of unauthorised absence alleged against Ist party cannot prove why Enquiry Officer did not consider the illness of Ist party is not found from record. Said aspect was also not considered by Appellate Authority while rejecting appeal of Ist party. The documents produced about illness of Ist party charge of unauthorized absence cannot be established. Therefore I record my finding in Point No.1 in Negative.

9. Point No.2- Charge of unauthorized absence alleged against workman is not proved therefore punishment of retirement imposed against workman cannot be sustained. The reply of Ist party workman before Enquiry Officer shows he was suffering from illness, his father was suffering from cancer, he had requested for sympathetic consideration. The charges alleged against workman is not proved, punishment of compulsory retirement against workman cannot be sustained. Said punishment deserves to be quashed and set aside. The age of workman is shown 47 years in his affidavit of evidence. He has not attained age of superannuation, therefore Ist party deserves to be reinstated with 50 % backwages. Accordingly I record my finding in Point No.2.

10. In the result, award is passed as under:-

- (1) The action of the management of Grey Iron Foundry in awarding compulsory retirement punishment w.e.f. 22-6-95 to Shri Sanjay Kumar Choudhary ex-photographer is not legal and proper.
- (2) Punishment of compulsory retirement is quashed. 2nd party is directed to reinstate workman with continuity in service and 50 % backwages.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 25 अप्रैल, 2017

का.आ. 1137.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मुख्य महाप्रबंधक, बीएसएनएल, भोपाल एवं उनके कर्मचारी के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संख्या सीजीआईटी/एलसी/आर/62/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17.04.2017 को प्राप्त हुआ था।

[सं. एल-40012/122/2005-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 25th April, 2017

S.O. 1137.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (No. CGIT/LC/R/62/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in Annexure, in the industrial dispute between the employers in relation to the Chief General Manager, BSNL, Bhopal and their workman, which was received by the Central Government on 17.04.2017.

[No. L-40012/122/2005-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/62/2006

Shri Sanjay Dharu
S/o Late Harprasad Dharu,
O/O Junior Telecom Officer (ENT),
Gadarwara,
Narsinghpur (MP)

...Workman

Versus

Chief General Manager,
Telecom, BSNL, Bhopal Circle,
Bhopal (MP)

...Management

AWARD

Passed on this 21st day of March, 2017

1. As per letter dated 21-9-2006 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-40012/122/2005-IR(DU). The dispute under reference relates to:

“Whether the action of the management of Chief General Manager, Telecom, BSNL Bhopal (MP) in terminating the services of their workman Shri Sanjay Kumar Dharu S/o Late Harprasad Dharu w.e.f. August 2002 is just and legal? If not, to what relief the workman is entitled?”

2. After receiving reference, notices were issued to the parties. Workman submitted statement of claim at page 3/1 to 3/3. Case of Ist party workman is that he was appointed as sweeper vide order dated 1-8-86 at Gadawara, Telephone Exchange. He was not considered for regularization in service. That his services were terminated without notice, retrenchment compensation was not paid to him. He continuously worked from August 86 to 2002. He worked more than 240 days during each of the year 1986 to 2002 instead of regularizing his services. He was denied work from August 2002. On such ground, Ist party prays for his reinstatement with backwages.

3. 2nd party filed Written Statement opposing claim of Ist party workman. 2nd party submits that Ist party was casual labour. He was working when work was available, workman was engaged for sweeping cleaning of latrine, bathroom 3-4 times in a month. The officers are engaging sweeper local available on contract basis. Workman was never engaged on muster roll by management. He not completed 240 days continuous service during any of the calendar year. Post of sweeper is not sanctioned in telephone exchange, Gadawara. Claim of Ist party for reinstatement or regularization is fabricated and false. Violation of provision of ID Act is denied. 2nd party prays for rejection of claim.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of Chief General Manager, Telecom, BSNL Bhopal (MP) in terminating the services of their workman Shri Sanjay Kumar Dharu S/o Late Harprasad Dharu w.e.f. August 2002 is just and legal?	In Negative
(ii) If not, what relief the workman is entitled to?”	As per final order.

REASONS

5. The term of reference pertains to legality of the termination of services. Workman filed affidavit of his evidence. He has stated that he was engaged as temporary sweeper on 1-8-86. He was continuously working as such till August 2003 without any notice in writing. That he completed more than 240 days working during each of the year. In his cross, Ist party workman says at the time he was engaged, post was advertised. He received appointment order. the post was not advertised in newspaper. His name was not sponsored through Employment Exchange. Appointment letter is not produced on record. He denies that he was called as per the need of work. He received wages for his working days. Other employees were engaged for sweeping work. He denies that he was engaged for cleaning, sweeping, cleaning of toilets 3-4 times in a month. He denies that he did not work on muster roll. He denies that he did not work 240 days during any of the year.

6. Management's witness Deenanath filed affidavit of his evidence supporting contentions of management that the workman was engaged 3-4 times in a month for cleaning of toilets. That workman as not engaged for 240 days during any of the year. Management's witness in his cross says he was working as GTO at Gadawara during 2001 to 2005. Ist party workman worked under him for some period. Documents pertaining to engage workman and terminating from service are not produced in the case. Management's witness denies that workman as engaged regular sweeper. In telephone office Gadawara, there is one latrine and 3 toilets. Workman was not served with retrenchment notice. Witness of management was unable to tell working days of Ist party. He denied that without going through the documents of working days of Ist party he has given false evidence. Workman produced documents Exhibit W-1 shows payment of Rs.400 for the period 1-8-01 to 31-8-01, W-2 shows payment of Rs.400 for the period 1-1-02 to 25-1-02. The documents produced by 2nd party are admitted by Ist party marked Exhibit M-1 to 8 shows payment of wages Rs.400 for the period 1-4-01 to 25-4-01, M-2 shows payment of wages Rs.400 for the period 1-5-01 to 25-1-01, M-3

shows payment of wages Rs.400 for the period 1-8-01 to 25-8-01, M-4 shows payment of wages Rs.400 for the period 1-9-01 to 25-9-01, M-5 shows payment of wages Rs.400 for the period 1-10-01 to 25-8-01. Similarly M-6 shows payment of wages Rs.400 for the period 1-11-01 to 25-11-01, M-7 shows payment of wages Rs.400 for the period 1-12-01 to 25-12-01, M-8 shows payment of wages Rs.400 for the period 1-1-02 to 25-1-02. The documents discussed above corroborates evidence of workman that he completed 240 days continuous work. His services were terminated without notice. Retrenchment compensation was not paid. Termination of services of Ist party is therefore illegal for violation of Section 25-F of ID Act. For above reasons, I record my finding in Point No.1 in Negative.

7. Point No.2 In view of my finding in Point No.,1 that workman was illegally terminated. Considering nature of employment of Ist party workman, compensation Rs.50,000 would be appropriate. Accordingly I record my finding in Point No.2.

8. In the result, award is passed as under:-

- (1) The action of the management of Chief General Manager, Telecom, BSNL Bhopal (MP) in terminating the services of their workman Shri Sanjay Kumar Dharu S/o Late Harprasad Dharu w.e.f. August 2002 is not proper and legal.
- (2) 2nd party management is directed to pay compensation Rs.50,000 to the workman.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 25 अप्रैल, 2017

का.आ. 1138.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार महाप्रबंधक, आयुध कारखाना, खमरिया, जबलपुर एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संख्या सीजीआईटी/एलसी/ आर/101/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17.04.2017 को प्राप्त हुआ था।

[सं. एल-14011/14/2001-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 25th April, 2017

S.O. 1138.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (No. CGIT/LC/R/101/2002) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in Annexure, in the industrial dispute between the employers in relation to the General Manager, Ordnance Factory, Khamaria, Jabalpur and their workman, which was received by the Central Government on 17.04.2017.

[No. L-14011/14/2001-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/101/2002

Shri O.P.Yadav, President,
Ordnance Factory Labour Union.
H.No. 61/8, Bhanatalia,
Hanumantal Behind Police Station,
Jabalpur

...Workman/Union

Versus

General Manager,
Ordnance Factory,
Khamaria, Jabalpur

...Management

AWARD

Passed on this 16th day of March, 2017

1. As per letter dated 4-7-02 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-14011/14/2001-IR(DU). The dispute under reference relates to:

“Whether the action of the General Manager, Ordnance Factory, Khamaria, Jabalpur MP in awarding punishment to Shri Narbada Prasad Jhariya O.F.K.T.No. QF-1/11/60629 without holding departmental inquiry is legal and justified? If not, to what relief the concerned workman is entitled?”

2. After receiving reference, notices were issued to the parties. Workman submitted statement of claim at Page 4/1 to 4/3. Case of workman is that he was appointed on the post of labour in 1982. He was working to the satisfaction of his superiors. His service record was unblemished. He was on duty on 6-4-99. On that day any incident has not occurred. He not committed misconduct on that day. The allegation of management are false and fabricated. Before issuing order dated 26-4-99, 2nd party failed to issue showcause notice. Any chargesheet was not given to him. No enquiry was conducted against him. That 2nd party management failed to offer him opportunity to defend him. The order passed by 2nd party is illegal. That any person cannot be punished without affording opportunity of hearing. It is reiterated that though chargesheet was issued, no enquiry was conducted. The order issued by management is in violation of principles of natural justice. That he had not committed any misconduct punishable under law. 2nd party is employer. On such ground, Ist party prays to set aside order dated 26-4-99.

3. 2nd party filed Written Statement at Page 6/1 to 6/5 opposing claim of workman. 2nd party submits that workman was transferred from Q-1 to QF-1 section. He used to visit Q-1 section frequently without working and creating problems in Q-1 section. It is further contented that the workman came forward and tried to take out milk from milk pot without permission. He was stopped by Shri Suraj Prasad., T.No.1/309. That Ist party become furious, abused in filthy language and manhandled to Shri Suraj Prasad. Both Suraj Prasad and workman were taken to Eastland Hospital, Khamaria, said incident was reported by concerned section. Workman submitted complaint. Similarly victim Suraj Prasad also submitted complaint. Both complaints were enquired by Shri Naghwanshi chargeman conducting spot finding. Statements of Suraj, Rajput workman were recorded. Chargeman Grade I Security Office submitted report to the Security department. The statements along with report by Naghwanshi were forwarded to General Manager vide letter dated 7-1-99. Both Suraj Prasad and workman Narbada Prasad were sent for cross examinations. Medical Report was received. After receiving report from Security Division, Ordnance Factory Khamaria, chargesheet was issued to workman on 28-1-99 under Rule 16 of CCS CCA Rule 1965. On receipt of said memorandum, workman submitted reply. Reply submitted by workman was found unsatisfactory. Although misconduct committed by workman warranted under Rule 14 management taken lenient view and chargesheet was issued under Rule 16. As charges found proved, punishment of reduction of pay one stage for period of one year was imposed. 2nd party further submits if enquiry is found vitiated, permission be granted to prove misconduct. It is reiterated that charges proved against workman warranting punishment under Rule 14. The Disciplinary Authority imposed minor punishment. Action of the management doesnot call for interference.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the General Manager, Ordnance Factory, Khamaria, Jabalpur MP in awarding punishment to Shri Narbada Prasad Jhariya O.F.K.T.No. QF-1/11/60629 without holding departmental inquiry is legal and justified?	In Affirmative
(ii) If not, what relief the workman is entitled to?”	Workman is not entitled to any relief.

REASONS

5. The term of reference pertains to whether punishment imposed against workman without conducting enquiry is legal. Ist party not adduced evidence. Evidence of workman was closed on 15-9-14.

6. Management filed affidavit of evidence of Shri R.P.Chourasiya, affidavit of management's witness is devoted that workman was posted in Q-1 section. He was transferred to QF-1 section. He used to visit Q section frequently without any work creating disturbance in Q-1 section. That workman had tried to take out milk from milk pot without permission he was stopped by Suraj Prasad. Workman abused him in filthy language and also manhandled Suraj

Prasad. Complaints were received from both Suraj Prasad and workman. Shri Nagwanshi chargeman had conducted spot enquiry recording statements. Chargesheet was issued to workman under Rule 16 reply submitted by workman was found unsatisfactory. Though enquiry warranted under Rule 14 of CCS CCA Rules, chargesheet was issued under Rule 16. It was not mandatory to conduct enquiry. From evidence of management's witness, documents are collectively marked as Exhibit M-1. In his cross, management's witness says he was not concerned with the enquiry, incident not occurred in his presence. Documents were not supplied to workman along with chargesheet. He personally doesnot know the persons concerned with the enquiry. Documents produced by management is report submitted by chargeman Shri Nagwanshi. The complaint of sSuraj Prasad, statements of Suraj Prasad, Ramnaresh, Dhyan chand Yadav, P.C.Rajpur and report submitted by P.C.Nagwanshi. Report submitted to General Manager dated 7-1-99 for taking action in the matter. Reply submitted by workman to the chargesheet contending that the charges were false.

CCS CCA Rule-11 provides minor penalties. The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on a Government servant, namely:- Minor Penalties - (i) censure; (ii) withholding of his promotion; (iii) recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government by negligence or breach of orders; (iii-a) reduction to a lower stage in the time-scale of pay by one stage for a period not exceeding three years, without cumulative effect and not adversely affecting his pension. (iv) withholding of increments of pay.

7. Documents produced by management. The memorandum was issued under Rule 16 of CCS CCA Rule. Ist party workman had given reply alleging the charges to be false. Without conducting enquiry, order dated 26-4-99 was issued imposing penalty of reduction in pay one stage from Rs.4110 pm to Rs.4030 pm for a period of one year without cumulative effect Exhibit M-16 invoking Rule 16 of CCS CCA Rules.

Rule 16 provides procedure for imposing minor penalties: (1) Subject to the provisions of sub-rule (3) of rule 15, no order imposing on a Government servant any of the penalties specified in clause (i) to (iv) of rule 11 shall be made except after- (a) informing the Government servant in writing of the proposal to take action against him and of the imputations of misconduct or misbehaviour on which it is proposed to be taken, and giving him reasonable opportunity of making such representation as he may wish to make against the proposal; (b) holding an inquiry in the manner laid down in sub-rules (3) to (23) of rule 14, in every case in which the disciplinary authority is of the opinion that such inquiry is necessary; (c) taking the representation, if any, submitted by the Government servant under clause (a) and the record of inquiry, if any, held under clause (b) into consideration; (d) recording a finding on each imputation or misconduct or misbehaviour; and (e) consulting the Commission where such consultation is necessary.

Chargesheet was issued under Rule 16 and workman was given opportunity. Workman has submitted reply. Rule 16(1) doesnot contemplate to conduct enquiry. Therefore punishment imposed against workman reducing his pay by one stage is legal. For above reasons, I record my finding in Point No.1 in Affirmative.

8. In the result, award is passed as under:-

- (1) The action of the General Manager, Ordnance Factory, Khamaria, Jabalpur MP in awarding punishment to Shri Narbada Prasad Jhariya O.F.K.T.No. QF-1/11/60629 without holding departmental Enquiry is legal and proper.
- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 26 अप्रैल, 2017

का.आ. 1139.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कार्यकारी निदेशक, महानगर टेलीफोन निगम लिमिटेड, एमटीएनएल टेलीफोन हाउस, मुंबई एवं उनके कर्मचारी के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं. 2, मुंबई के पंचाट (संदर्भ संख्या 2/100 ऑफ 2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25.04.2017 को प्राप्त हुआ था।

[सं. एल-40011/15/2014-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 26th April, 2017

S.O. 1139.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (ID Case No. 2/100 of 2014) of the Central Government Industrial Tribunal-cum-Labour Court No.2, Mumbai as shown in Annexure, in the industrial dispute between the employers in relation to

the Executive Director, Mahanagar Telephone Nigam Ltd., MTNL Telephone House, Mumbai and their workman, which was received by the Central Government on 25.04.2017.

[No. L-40011/15/2014-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.2, MUMBAI

PRESENT : M.V. DESHPANDE, Presiding Officer

REFERENCE NO.CGIT-2/100 of 2014

**EMPLOYERS IN RELATION TO THE MANAGEMENT OF
MAHANAGAR TELEPHONE NIGAM LIMITED**

The Executive Director
Mahanagar Telephone Nigam Ltd.
MTNL Telephone House, 15th floor
Veer Savarkar Marg
Dadar (W)
Mumbai 400 028.

AND

THEIR WORKMEN

The General Secretary
Mahanagar Telephone Nigam Karmachari Front
Parel Telephone Complex
Post Office Lane
Parel
Mumbai 400 012.

APPEARANCES:

FOR THE EMPLOYER : Mr. V. Narayanan, Advocate

FOR THE UNION : No appearance

Mumbai, dated the 6th April, 2017

AWARD

The Government of India, Ministry of Labour & Employment by its Order No.L-40011/15/2014-IR (DU), dated 29.10.2014 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

“Whether the action of the management of MTNL, Mumbai in extending the trade union facilities to the Mahanagar Telephone Nigam Kamgar Sangh after the expiry of its recognition period on and from 20.05.2011 without conducting secret ballot election for verifying the trade union membership of the unions operating in MTNL, Mumbai is just and proper? If not, what relief the union is entitled to ?”

2. After receipt of the Reference, notices were issued to both the parties. Second party/ Union was served with notice vide acknowledgment (Ex-4). Matter was adjourned on several occasions for filing Statement of Claim by second party/ Union. Second party/Union neither appeared before this Tribunal nor filed Statement of claim. Without Statement of claim, the Reference cannot be decided on merits and the same deserves to be dismissed. Orders were passed on Ex-1. Accordingly I pass the following order:

ORDER

Reference stands dismissed for want of prosecution.

Date: 06.04.2017

M. V. DESHPANDE, Presiding Officer/Judge

नई दिल्ली, 26 अप्रैल, 2017

का.आ. 1140.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार महाप्रबंधक, हिंदुस्तान एयरोनॉटिक्स लिमिटेड, नासिक एवं उनके कर्मचारी के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं. 2, मुंबई के पंचाट (संदर्भ संख्या 2/82 ऑफ 2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25.04.2017 को प्राप्त हुआ था।

[सं. एल-14012/21/2014-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 26th April, 2017

S.O. 1140.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (ID Case No. 2/82 of 2014) of the Central Government Industrial Tribunal-cum-Labour Court No.2, Mumbai as shown in Annexure, in the industrial dispute between the employers in relation to the General Manager, Hindustan Aeronautics Ltd., Nasik and their workman, which was received by the Central Government on 25.04.2017.

[No. L-14012/21/2014-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT : M.V. DESHPANDE, Presiding Officer

REFERENCE NO.CGIT-2/82 of 2014

EMPLOYERS IN RELATION TO THE MANAGEMENT OF
HINDUSTAN AERONAUTICS LIMITED

The General Manager
Hindustan Aeronautics Ltd.
Ojhar Township (PO)
Nasik 422 207 (MS)

AND

THEIR WORKMEN

Shri Prabhakar Kashinath Kulkarni
Flat No.06, Samir Prasanna Apartment
Atmavishwas Co-op. Hsg. Society
Indira Nagar
Nasik (MS) 422 009

APPEARANCES:

FOR THE EMPLOYER : Mr. Sunil Shroff, Representative

FOR THE WORKMEN : No appearance.

Mumbai, dated the 9th March, 2017

AWARD

The Government of India, Ministry of Labour & Employment by its Order No.L-14012/21/2014-IR (DU), dated 04.08.2014 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

“Whether the action of the management of the Hindustan Aeronautics Ltd. in terminating the services of the workman Shri Prabhakar Kashinath Kulkarni w.e.f. 21.12.1996 is just fair and legal? If not, to what relief the workmen concerned is entitled to?”

2. After receipt of the Reference, notices were issued to both the parties. Mr. Sunil Shroff appeared on behalf of the first party/ Management and filed undertaking (Ex-4) to file Vakalatnama. Again notice (Ex-5) was sent to Second party workman which was returned by the postal authorities. Today also nobody appeared on behalf of second party

Workman or filed Statement of Claim. First party management filed application (Ex-6) for disposing the reference. Orders were passed on Ex-6. Without Statement of claim, the Reference cannot be decided on merits and the same deserves to be dismissed. Thus I pass the following order:

ORDER

Reference stands dismissed for want of prosecution.

Date: 09.03.2017

M. V. DESHPANDE, Presiding Officer/Judge

नई दिल्ली, 26 अप्रैल, 2017

का.आ. 1141.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार निदेशक, पोमेग्रेनेट के लिए राष्ट्रीय अनुसंधान केंद्र, सोलापुर विश्वविद्यालय के पास, सोलापुर (एमएस) व अन्य एवं उनके कर्मचारी के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं. 2, मुंबई के पंचाट (संदर्भ संख्या 2/41 ऑफ 2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25.04.2017 को प्राप्त हुआ था।

[सं. एल-42012/39/2014-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 26th April, 2017

S.O. 1141.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (ID Case No. 2/41 of 2014) of the Central Government Industrial Tribunal-cum-Labour Court No.2, Mumbai as shown in Annexure, in the industrial dispute between the employers in relation to the Director, National Research Centre for Pomegranate, Near Solapur University, Solapur (MS) and others and their workman, which was received by the Central Government on 25.04.2017.

[No. L-42012/39/2014-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT : M.V. DESHPANDE, Presiding Officer

REFERENCE NO. CGIT-2/41 of 2014

EMPLOYERS IN RELATION TO THE MANAGEMENT OF

(1) NATIONAL RESEARCH CENTRE FOR POMEGRANATE

The Director
National Research Centre for Pomegranate
Near Solapur University
Solapur (MS).

(2) M/S. SWADESHI SECURITIES

M/s. Swadeshi Securities
96, SalgarVasti
Dongaon Road
Solapur (MS).

AND

THEIR WORKMAN

Smt. Nagar Shrimant Sakhare
H. No.308, Near Water Tank
A/P Khedgaon, Tal. North Solapur
Solapur, Maharashtra 413 202.

APPEARANCES:

FOR THE EMPLOYER NO. 1 : Mr. S.P. Chinchwadkar, Advocate
 FOR THE EMPLOYER NO. 2 : No appearance
 FOR THE WORKMAN : Mr. V.R. Deshpande, Advocate

Mumbai, dated the 10th March, 2017

AWARD

The Government of India, Ministry of Labour & Employment by its Order No. L-42012/39/2014-IR (DU), dated 21.07.2014 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

“Whether the demand of the workman Smt. Nagar Shrimant Sakhare for asking regularization as an employee of National Research Centre for Pomegranate, Solapur is legal and justified? If yes to what relief the workman is entitled to?”

2. After receipt of the reference, both parties were served with notice. In response to the notice, Second party Workman filed an application (Ex-8) for interim relief and thereafter filed Statement of Claim at Ex-9. First party Management resisted the Statement of claim by filing their Written Statement at Ex-10 and their Say (Ex-11) on IR application. Matter was fixed for filing Written Statement by Management no.2.

3. Today, Advocate for the first party/ management filed application to take the matter on today's board. Second party Workman remained present along with her Advocate. Second party/ Workman filed application in the form of affidavit (Ex-13) requesting to dispose of the Reference as she is not interested in pursuing the matter further. Orders were passed on Ex-13. As the Second Party workman does not want to pursue this matter, the Reference is disposed of. Hence the order:

ORDER

Reference stands disposed of as withdrawn.

Date: 10.03.2017

M. V. DESHPANDE, Presiding Officer

नई दिल्ली, 26 अप्रैल, 2017

का.आ. 1142.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार निदेशक, पोमेग्रेनेट के लिए राष्ट्रीय अनुसंधान केंद्र, सोलापुर विश्वविद्यालय के पास, सोलापुर (एमएस) व अन्य एवं उनके कर्मचारी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं. 2, मुंबई के पंचाट (संदर्भ संख्या 2/43 ऑफ 2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25.04.2017 को प्राप्त हुआ था।

[सं. एल-42012/41/2014-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 26th April, 2017

S.O. 1142.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (ID Case No. 2/43 of 2014) of the Central Government Industrial Tribunal-cum-Labour Court No.2, Mumbai as shown in Annexure, in the industrial dispute between the employers in relation to the Director, National Research Centre for Pomegranate, Near Solapur University, Solapur (MS) and others and their workman, which was received by the Central Government on 25.04.2017.

[No. L-42012/41/2014-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI**

PRESENT : M.V. DESHPANDE, Presiding Officer

REFERENCE NO. CGIT-2/43 of 2014

EMPLOYERS IN RELATION TO THE MANAGEMENT OF**(1) NATIONAL RESEARCH CENTRE FOR POMEGRANATE**

The Director
National Research Centre for Pomegranate
Near Solapur University
Solapur (MS)

(2) M/S. SWADESHI SECURITIES

M/s. Swadeshi Securities
96, Salgar Vasti
Dongaon Road
Solapur (MS)

AND**THEIR WORKMAN**

Smt. Mahananda B. Todkar
A/p. 537, Hiaj
Tal. North Solapur
Maharashtra-413 255

APPEARANCES:

FOR THE EMPLOYER NO. 1 : Mr. S.P. Chinchwadkar, Advocate

FOR THE EMPLOYER NO. 2 : No appearance

FOR THE WORKMAN : Mr. V.R. Deshpande, Advocate

Mumbai, dated the 10th March, 2017

AWARD

The Government of India, Ministry of Labour & Employment by its Order No.L-42012/41/2014-IR (DU), dated 21.07.2014 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

“Whether the demand of the workman Smt. Mahananda B. Todkar for asking regularization as an employee of National Research Centre for Pomegranate, Solapur is legal and justified? If yes to what relief the workman is entitled to?”

2. After receipt of the reference, both parties were served with notice. In response to the notice, Second party Workman filed an application (Ex-8) for interim relief and thereafter filed Statement of Claim at Ex-9. First party Management resisted the Statement of claim by filing their Written Statement at Ex-10 and their Say (Ex-11) on IR application. Matter was fixed for filing Written Statement by Management no.2.

3. Today, Advocate for the first party/ management filed application to take the matter on today's board. Second party Workman remained present along with her Advocate. Second party/ Workman filed application in the form of affidavit (Ex-13) requesting to dispose of the Reference as she is not interested in pursuing the matter further. Orders were passed on Ex-13. As the Second Party workman does not want to pursue this matter, the Reference is disposed of. Hence the order:

ORDER

Reference stands disposed of as withdrawn.

Date: 10.03.2017

M. V. DESHPANDE, Presiding Officer

नई दिल्ली, 26 अप्रैल, 2017

का.आ. 1143.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार निदेशक, पोमेग्रेनेट के लिए राष्ट्रीय अनुसंधान केंद्र, सोलापुर विश्वविद्यालय के पास, सोलापुर (एमएस) व अन्य एवं उनके कर्मचारी के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम

न्यायालय नं. 2, मुंबई के पंचाट (संदर्भ संख्या 2/48 ऑफ 2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25.04.2017 को प्राप्त हुआ था।

[सं. एल-42012/47/2014-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 26th April, 2017

S.O. 1143.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (ID Case No. 2/48 of 2014) of the Central Government Industrial Tribunal-cum-Labour Court No.2, Mumbai as shown in Annexure, in the industrial dispute between the employers in relation to the Director, National Research Centre for Pomegranate, Near Solapur University, Solapur (MS) and others and their workman, which was received by the Central Government on 25.04.2017.

[No. L-42012/47/2014-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT : M.V. DESHPANDE, Presiding Officer

REFERENCE NO. CGIT-2/48 of 2014

EMPLOYERS IN RELATION TO THE MANAGEMENT OF

(1) NATIONAL RESEARCH CENTRE FOR POMEGRANATE

The Director
National Research Centre for Pomegranate
Near Solapur University
Solapur (MS)

(2) M/S. SWADESHI SECURITIES

M/s. Swadeshi Securities
96, Salgar Vasti
Dongaon Road
Solapur (MS)

AND

THEIR WORKMAN

Smt. Vaishali Balu Kalagate
R/o. Kondi
Tal. North Solapur
Solapur, Maharashtra-413 001

APPEARANCES:

FOR THE EMPLOYER NO. 1	:	Mr. S.P. Chinchwadkar, Advocate
FOR THE EMPLOYER NO. 2	:	No appearance
FOR THE WORKMAN	:	Mr. V.R. Deshpande, Advocate

Mumbai, dated the 10th March, 2017

AWARD

The Government of India, Ministry of Labour & Employment by its Order No.L-42012/47/2014-IR (DU), dated 22.07.2014 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

“Whether the demand of the workman Smt. Vaishali Balu Kalagate for asking regularization as an employee of National Research Centre for Pomegranate, Solapur is legal and justified? If yes to what relief the workman is entitled to?”

2. After receipt of the reference, both parties were served with notice. In response to the notice, Second party Workman filed an application (Ex-8) for interim relief and thereafter filed Statement of Claim at Ex-9. First party Management No.1 resisted the Statement of claim by filing their Written Statement at Ex-10 and their Say (Ex-11) on IR application. Matter was fixed for filing Written Statement by Management no.2.

3. Today, Advocate for the first party/ management filed application to take the matter on today's board. Second party Workman remained present along with her Advocate. Second party/Workman filed application in the form of affidavit (Ex-13) requesting to dispose of the Reference as she is not interested in pursuing the matter further. Orders were passed on Ex-13. As the Second Party workman does not want to pursue this matter, the Reference is disposed of. Hence the order:

ORDER

Reference stands disposed of as withdrawn.

Date: 10.03.2017

M. V. DESHPANDE, Presiding Officer

नई दिल्ली, 26 अप्रैल, 2017

का.आ. 1144.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार निदेशक, पोमेग्रेनेट के लिए राष्ट्रीय अनुसंधान केंद्र, सोलापुर विश्वविद्यालय के पास, सोलापुर (एमएस) व अन्य एवं उनके कर्मचारी के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं. 2, मुंबई के पंचाट (संदर्भ संख्या 2/54 ऑफ 2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25.04.2017 को प्राप्त हुआ था।

[सं. एल-42012/53/2014-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 26th April, 2017

S.O. 1144.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (ID Case No. 2/54 of 2014) of the Central Government Industrial Tribunal-cum-Labour Court No.2, Mumbai as shown in Annexure, in the industrial dispute between the employers in relation to the Director, National Research Centre for Pomegranate, Near Solapur University, Solapur (MS) and others and their workman, which was received by the Central Government on 25.04.2017.

[No. L-42012/53/2014-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT : M.V. DESHPANDE, Presiding Officer

REFERENCE NO. CGIT-2/54 of 2014

EMPLOYERS IN RELATION TO THE MANAGEMENT OF

(1) NATIONAL RESEARCH CENTRE FOR POMEGRANATE

The Director
National Research Centre for Pomegranate
Near Solapur University
Solapur (MS)

(2) M/S. SWADESHI SECURITIES

M/s. Swadeshi Securities
96, Salgar Vasti
Dongaon Road
Solapur (MS)

AND

THEIR WORKMAN

Smt. Jayashri Manoj Mhamane
R/o. Wani Galli, Bale
Tal. North Solapur
Solapur, Maharashtra-413 001

APPEARANCES:

FOR THE EMPLOYER NO. 1 : Mr. S.P. Chinchwadkar, Advocate
FOR THE EMPLOYER NO. 2 : No appearance
FOR THE WORKMAN : Mr. V.R. Deshpande, Advocate

Mumbai, dated the 10th March, 2017

AWARD

The Government of India, Ministry of Labour & Employment by its Order No.L-42012/53/2014-IR (DU), dated 25.07.2014 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

“Whether the demand of the workman Smt. Jayashri Manoj Mhamane for asking regularization as an employee of National Research Centre for Pomegranate, Solapur is legal and justified? If yes, to what relief the workman is entitled to?”

2. After receipt of the reference, both parties were served with notice. In response to the notice, Second party Workman filed her Statement of Claim (Ex-9) and an application (Ex-10) for interim relief. First party Management resisted the Statement of claim by filing their Written Statement at Ex-11 and their Say (Ex-12) on IR application. Matter was fixed for filing Written Statement by Management no.2.

3. Today, Advocate for the first party/ management filed application to take the matter on today's board. Second party Workman remained present along with her Advocate. Second party/ Workman filed application in the form of affidavit (Ex-14) requesting to dispose of the Reference as she is not interested in pursuing the matter further. Orders were passed on Ex-14. As the Second Party workman does not want to pursue this matter, the Reference is disposed of. Hence the order:

ORDER

Reference stands disposed of as withdrawn.

Date: 10.03.2017

M. V. DESHPANDE, Presiding Officer

नई दिल्ली, 26 अप्रैल, 2017

का.आ. 1145.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार निदेशक, पोमेग्रेनेट के लिए राष्ट्रीय अनुसंधान केंद्र, सोलापुर विश्वविद्यालय के पास, सोलापुर (एमएस) व अन्य एवं उनके कर्मचारी के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं. 2, मुंबई के पंचाट (संदर्भ संख्या 2/62 ऑफ 2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25.04.2017 को प्राप्त हुआ था।

[सं. एल-42012/61/2014-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 26th April, 2017

S.O. 1145.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (ID Case No. 2/62 of 2014) of the Central Government Industrial Tribunal-cum-Labour Court No.2, Mumbai as shown in Annexure, in the industrial dispute between the employers in relation to the Director, National Research Centre for Pomegranate, Near Solapur University, Solapur (MS) and others and their workman, which was received by the Central Government on 25.04.2017.

[No. L-42012/61/2014-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI****PRESENT : M.V. DESHPANDE, Presiding Officer****REFERENCE NO. CGIT-2/62 of 2014****EMPLOYERS IN RELATION TO THE MANAGEMENT OF****(1) NATIONAL RESEARCH CENTRE FOR POMEGRANATE**

The Director
National Research Centre for Pomegranate
Near Solapur University
Solapur (MS)

(2) M/S. SWADESHI SECURITIES

M/s. Swadeshi Securities
96, Salgar Vasti
Dongaon Road
Solapur (MS)

AND**THEIR WORKMAN**

Smt. Mahadevi Nagnath Babar
A/p. Kondi
Near Brambhadev Mane Bank
Tal. North Solapur
Solapur, Maharashtra-413 001

APPEARANCES:

FOR THE EMPLOYER NO. 1 : Mr. S.P. Chinchwadkar, Advocate
FOR THE EMPLOYER NO. 2 : No appearance
FOR THE WORKMAN : Mr. V.R. Deshpande, Advocate
Mumbai, the 10th March, 2017

AWARD

The Government of India, Ministry of Labour & Employment by its Order No.L-42012/61/2014-IR (DU), dated 23.07.2014 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

“Whether the demand of the workman Smt. Mahadevi Nagnath Babar for asking regularization as an employee of National Research Centre for Pomegranate, Solapur is legal and justified? If yes, to what relief the workman is entitled to?”

2. After receipt of the reference, both parties were served with notice. In response to the notice, Second party Workman filed Statement of Claim at Ex-8. First party Management No.1 resisted the Statement of claim by filing their Written Statement at Ex-9. Matter was fixed for filing Written Statement by Management no.2.

3. Today, Advocate for the first party/ management filed application to take the matter on today's board. Second party Workman remained present along with her Advocate. Second party/Workman filed application in the form of affidavit (Ex-11) requesting to dispose of the Reference as she is not interested in pursuing the matter further. Orders were passed on Ex-11. As the Second Party workman does not want to pursue this matter, the Reference is disposed of. Hence the order:

ORDER

Reference stands disposed of as withdrawn.

Date: 10.03.2017

M. V. DESHPANDE, Presiding Officer

नई दिल्ली, 26 अप्रैल, 2017

का.आ. 1146.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार निदेशक, पोमेग्रेनेट के लिए राष्ट्रीय अनुसंधान केंद्र, सोलापुर विश्वविद्यालय के पास, सोलापुर (एमएस) व अन्य एवं उनके कर्मचारी के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं. 2, मुंबई के पंचाट (संदर्भ संख्या 2/67 ऑफ 2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25.04.2017 को प्राप्त हुआ था।

[सं. एल-42012/66/2014-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 26th April, 2017

S.O. 1146.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (ID Case No. 2/67 of 2014) of the Central Government Industrial Tribunal-Labour Court No.2, Mumbai as shown in Annexure, in the industrial dispute between the employers in relation to the Director, National Research Centre for Pomegranate, Near Solapur University, Solapur (MS) and others and their workman, which was received by the Central Government on 25.04.2017.

[No. L-42012/66/2014-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT : M.V. DESHPANDE, Presiding Officer

REFERENCE NO. CGIT-2/67 of 2014

EMPLOYERS IN RELATION TO THE MANAGEMENT OF

(1) NATIONAL RESEARCH CENTRE FOR POMEGRANATE

The Director
National Research Centre for Pomegranate
Near Solapur University
Solapur (MS)

(2) M/S. SWADESHI SECURITIES

M/s. Swadeshi Securities
96, Salgar Vasti
Dongaon Road
Solapur (MS)

AND

THEIR WORKMAN

Smt. Kalpana D. Nikam
R/o. Kondi
Tal. North Solapur
Solapur, Maharashtra-413 001

APPEARANCES:

FOR THE EMPLOYER NO. 1 : Mr. S.P. Chinchwadkar, Advocate
FOR THE EMPLOYER NO. 2 : No appearance
FOR THE WORKMAN : Mr. V.R. Deshpande, Advocate

Mumbai, the 10th March, 2017

AWARD

The Government of India, Ministry of Labour & Employment by its Order No.L-42012/66/2014-IR (DU), dated 24.07.2014 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

“Whether the demand of the workman Smt. Kalpana D. Nikam for asking regularization as an employee of National Research Centre for Pomegranate, Solapur is legal and justified? If yes to what relief the workman is entitled to?”

2. After receipt of the reference, both parties were served with notice. In response to the notice, Second party Workman filed an application (Ex-8) for interim relief and thereafter filed Statement of Claim at Ex-9. First party Management No.1 resisted the Statement of claim by filing their Written Statement at Ex-10 and their Say (Ex-11) on IR application. Matter was fixed for filing Written Statement by Management no.2.

3. Today, Advocate for the first party/ management filed application to take the matter on today's board. Second party Workman remained present along with her Advocate. Second party/ Workman filed application in the form of affidavit (Ex-13) requesting to dispose of the Reference as she is not interested in pursuing the matter further. Orders were passed on Ex-13. As the Second Party workman does not want to pursue this matter, the Reference is disposed of. Hence the order:

ORDER

Reference stands disposed of as withdrawn.

Date: 10.03.2017

M. V. DESHPANDE, Presiding Officer

नई दिल्ली, 26 अप्रैल, 2017

का.आ. 1147.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार निदेशक, पोमेग्रेनेट के लिए राष्ट्रीय अनुसंधान केंद्र, सोलापुर विश्वविद्यालय के पास, सोलापुर (एमएस) व अन्य एवं उनके कर्मचारी के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं. 2, मुंबई के पंचाट (संदर्भ संख्या 2/69 ऑफ 2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25.04.2017 को प्राप्त हुआ था।

[सं. एल-42012/40/2014-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 26th April, 2017

S.O. 1147.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (ID Case No. 2/69 of 2014) of the Central Government Industrial Tribunal-cum-Labour Court No.2, Mumbai as shown in Annexure, in the industrial dispute between the employers in relation to the Director, National Research Centre for Pomegranate, Near Solapur University, Solapur (MS) and others and their workman, which was received by the Central Government on 25.04.2017.

[No. L-42012/40/2014-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI**

PRESENT : M.V. DESHPANDE, Presiding Officer

REFERENCE NO. CGIT-2/69 of 2014**EMPLOYERS IN RELATION TO THE MANAGEMENT OF****(1) NATIONAL RESEARCH CENTRE FOR POMEGRANATE**

The Director
National Research Centre for Pomegranate
Near Solapur University
Solapur (MS)

(2) M/S. SWADESHI SECURITIES

M/s. Swadeshi Securities
96, Salgar Vasti
Dongaon Road
Solapur (MS)

AND**THEIR WORKMAN**

Smt. Kanchan B. Bhosale
R/o. Kondi
Tal. North Solapur
Solapur, Maharashtra-413 001

APPEARANCES:

FOR THE EMPLOYER NO. 1 : Mr. S.P. Chinchwadkar, Advocate
FOR THE EMPLOYER NO. 2 : No appearance
FOR THE WORKMAN : Mr. V.R. Deshpande, Advocate

Mumbai, dated the 10th March, 2017

AWARD

The Government of India, Ministry of Labour & Employment by its Order No.L-42012/40/2014-IR (DU), dated 21.07.2014 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

“Whether the demand of the workman Smt. Kanchan B. Bhosale for asking regulation as an employee of National Research Centre for Pomegranate, Solapur is legal and justified? If yes to what relief the workman is entitled to?”

2. After receipt of the reference, both parties were served with notice. In response to the notice, Second party workman filed an application (Ex-8) for interim relief and thereafter filed Statement of Claim at Ex-9. First party Management resisted the Statement of claim by filing their Written Statement at Ex-10 and their Say (Ex-11) on IR application. Matter was fixed for filing Written Statement by Management no.2.

3. Today, Advocate for the first party/ management filed application to take the matter on today's board. Second party Workman remained present along with her Advocate. Second party/ Workman filed application in the form of affidavit (Ex-13) requesting to dispose of the Reference as she is not interested in pursuing the matter further. Orders were passed on Ex-13. As the Second Party workman does not want to pursue this matter, the Reference is disposed of. Hence the order:

ORDER

Reference stands disposed of as withdrawn.

Date: 10.03.2017

M. V. DESHPANDE, Presiding Officer

नई दिल्ली, 26 अप्रैल, 2017

का.आ. 1148.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार निदेशक, पोमेग्रेनेट के लिए राष्ट्रीय अनुसंधान केंद्र, सोलापुर विश्वविद्यालय के पास, सोलापुर (एमएस) व अन्य एवं उनके कर्मचारी के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं. 2, मुंबई के पंचाट (संदर्भ संख्या 2/72 ऑफ 2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25.04.2017 को प्राप्त हुआ था।

[सं. एल-42012/71/2014-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 26th April, 2017

S.O. 1148.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (ID Case No. 2/72 of 2014) of the Central Government Industrial Tribunal-cum-Labour Court No.2, Mumbai as shown in Annexure, in the industrial dispute between the employers in relation to the Director, National Research Centre for Pomegranate, Near Solapur University, Solapur (MS) and others and their workman, which was received by the Central Government on 25.04.2017.

[No. L-42012/71/2014-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI****PRESENT : M.V. DESHPANDE, Presiding Officer****REFERENCE NO. CGIT-2/72 of 2014****EMPLOYERS IN RELATION TO THE MANAGEMENT OF****(1) NATIONAL RESEARCH CENTRE FOR POMEGRANATE**

The Director
National Research Centre for Pomegranate
Near Solapur University
Solapur (MS)

(2) M/S. SWADESHI SECURITIES

M/s. Swadeshi Securities
96, Salgar Vasti
Dongaon Road
Solapur (MS)

AND**THEIR WORKMAN**

Smt. Jyotsna G. Bhosale
R/o. Kondi
Tal. North Solapur
Solapur, Maharashtra-413 001

APPEARANCES:

FOR THE EMPLOYER NO. 1 : Mr. S.P. Chinchwadkar, Advocate

FOR THE EMPLOYER NO. 2 : No appearance

FOR THE WORKMAN : Mr. V.R. Deshpande, Advocate

Mumbai, dated the 10th March, 2017**AWARD**

The Government of India, Ministry of Labour & Employment by its Order No.L-42012/71/2014-IR (DU), dated 24.07.2014 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

“Whether the demand of the workman Smt. Jyotsna G. Bhosale for asking regularization as an employee of National Research Centre for Pomegranate, Solapur is legal and justified? If yes, to what relief the workman is entitled to?”

2. After receipt of the reference, both parties were served with notice. In response to the notice, Second party Workman filed an application (Ex-9) for interim relief and thereafter filed Statement of Claim at Ex-10. First party Management resisted the Statement of claim by filing their Written Statement at Ex-11 and their Say (Ex-12) on IR application. Matter was fixed for filing Written Statement by Management no.2.

3. Today, Advocate for the first party/ management filed application to take the matter on today's board. Second party Workman remained present along with her Advocate. Second party/ Workman filed application in the form of

affidavit (Ex-14) requesting to dispose of the Reference as she is not interested in pursuing the matter further. Orders were passed on Ex-14. As the Second Party workman does not want to pursue this matter, the Reference is disposed of. Hence the order:

ORDER

Reference stands disposed of as withdrawn.

Date: 10.03.2017

M. V. DESHPANDE, Presiding Officer

नई दिल्ली, 26 अप्रैल, 2017

का.आ. 1149.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार निदेशक, पोमेग्रेनेट के लिए राष्ट्रीय अनुसंधान केंद्र, सोलापुर विश्वविद्यालय के पास, सोलापुर (एमएस) व अन्य एवं उनके कर्मचारी के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं. 2, मुंबई के पंचाट (संदर्भ संख्या 2/79 ऑफ 2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25.04.2017 को प्राप्त हुआ था।

[सं. एल-42012/78/2014-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 26th April, 2017

S.O. 1149.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (ID Case No. 2/79 of 2014) of the Central Government Industrial Tribunal-cum-Labour Court No.2, Mumbai as shown in Annexure, in the industrial dispute between the employers in relation to the Director, National Research Centre for Pomegranate, Near Solapur University, Solapur (MS) and others and their workman, which was received by the Central Government on 25.04.2017.

[No. L-42012/78/2014-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT : M.V. DESHPANDE, Presiding Officer

REFERENCE NO. CGIT-2/79 of 2014

EMPLOYERS IN RELATION TO THE MANAGEMENT OF

(1) NATIONAL RESEARCH CENTRE FOR POMEGRANATE

The Director
National Research Centre for Pomegranate
Near Solapur University
Solapur (MS)

(2) M/S. SWADESHI SECURITIES

M/s. Swadeshi Securities
96, Salgar Vasti
Dongaon Road
Solapur (MS)

AND

THEIR WORKMAN

Smt. Sunita K. Bansode
R/o. Kedgaon
Tal. North Solapur
Solapur, Maharashtra

APPEARANCES:

FOR THE EMPLOYER NO. 1 : Mr. S.P. Chinchwadkar, Advocate
 FOR THE EMPLOYER NO. 2 : No appearance
 FOR THE WORKMAN : Mr. V.R. Deshpande, Advocate

Mumbai, dated the 10th March, 2017

AWARD

The Government of India, Ministry of Labour & Employment by its Order No.L-42012/78/2014-IR (DU), dated 25.07.2014 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

“Whether the demand of the workman Smt. Sunita K. Bansode for asking regularization as an employee of National Research Centre for Pomegranate, Solapur is legal and justified? If yes to what relief the workman is entitled to?”

2. After receipt of the reference, both parties were served with notice. In response to the notice, Second party Workman filed an application (Ex-8) for interim relief and thereafter filed Statement of Claim at Ex-9. First party Management No.1 resisted the Statement of claim by filing their Written Statement at Ex-10 and their Say (Ex-11) on IR application. Matter was fixed for filing Written Statement by Management no.2.

3. Today, Advocate for the first party/ management filed application to take the matter on today's board. Second party Workman remained present along with her Advocate. Second party/Workman filed application in the form of affidavit (Ex-13) requesting to dispose of the Reference as she is not interested in pursuing the matter further. Orders were passed on Ex-13. As the Second Party workman does not want to pursue this matter, the Reference is disposed of. Hence the order:

ORDER

Reference stands disposed of as withdrawn.

Date: 10.03.2017

M. V. DESHPANDE, Presiding Officer

नई दिल्ली, 26 अप्रैल, 2017

का.आ. 1150.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार निदेशक, पोमेग्रेनेट के लिए राष्ट्रीय अनुसंधान केंद्र, सोलापुर विश्वविद्यालय के पास, सोलापुर (एमएस) व अन्य एवं उनके कर्मचारी के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं. 2, मुंबई के पंचाट (संदर्भ संख्या 2/103 ऑफ 2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25.04.2017 को प्राप्त हुआ था।

[सं. एल-42012/147/2014-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 26th April, 2017

S.O. 1150.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (ID Case No. 2/103 of 2014) of the Central Government Industrial Tribunal-cum-Labour Court No.2, Mumbai as shown in Annexure, in the industrial dispute between the employers in relation to the Director, National Research Centre for Pomegranate, Near Solapur University, Solapur (MS) and others and their workman, which was received by the Central Government on 25.04.2017.

[No. L-42012/147/2014-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT : M.V. DESHPANDE, Presiding Officer

REFERENCE NO. CGIT-2/103 of 2014

EMPLOYERS IN RELATION TO THE MANAGEMENT OF**(1) NATIONAL RESEARCH CENTRE FOR POMEGRANATE**

The Director
National Research Centre for Pomegranate
Near Solapur University
Solapur (MS)

(2) M/S. SWADESHI SECURITIES

M/s. Swadeshi Securities
96, Salgar Vasti
Dongaon Road
Solapur (MS)

AND**THEIR WORKMAN**

Smt. Vaishali Govadhan Gophane
A/p. Kondi
Tal. North Solapur
Solapur, Maharashtra-413 00

APPEARANCES:

FOR THE EMPLOYER NO. 1 : Mr. S.P. Chinchwadkar, Advocate

FOR THE EMPLOYER NO. 2 : No appearance

FOR THE WORKMAN : Mr. V.R. Deshpande, Advocate

Mumbai, dated the 10th March, 2017

AWARD

The Government of India, Ministry of Labour & Employment by its Order No.L-42012/147/2014-IR (DU), dated 02.12.2014 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

“Whether the demand of the workman Smt. Vaishali Govardhan Gophane for asking regularization as an employee of National Research Centre for Pomegranate, Solapur is legal and justified? If not, to what relief the workman is entitled to?”

2. After receipt of the reference, both parties were served with notice. In response to the notice, Second party Workman filed an application (Ex-7) for interim relief and thereafter filed Statement of Claim at Ex-8. First party Management No.1 resisted the Statement of claim by filing their Written Statement at Ex-10 and their Say (Ex-11) on IR application. Matter was fixed for filing Written Statement by Management no.2.

3. Today, Advocate for the first party/ management filed application to take the matter on today's board. Second party Workman remained present along with her Advocate. Second party/ Workman filed application in the form of affidavit (Ex-13) requesting to dispose of the Reference as she is not interested in pursuing the matter further. Orders were passed on Ex-13. As the Second Party workman does not want to pursue this matter, the Reference is disposed of. Hence the order:

ORDER

Reference stands disposed of as withdrawn.

Date: 10.03.2017

M. V. DESHPANDE, Presiding Officer

नई दिल्ली, 26 अप्रैल, 2017

का.आ. 1151.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार निदेशक, ऑल इंडिया इंस्टिट्यूट ऑफ मेडिकल साइंसेस, नई दिल्ली एवं उनके कर्मचारी के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं. 1, दिल्ली के पंचाट (संदर्भ संख्या 138/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.03.2017 को प्राप्त हुआ था।

[सं. एल-42011/32/2012-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 26th April, 2017

S.O. 1151.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (ID Case No. 138/2012) of the Central Government Industrial Tribunal-cum-Labour Court No.1, Delhi as shown in Annexure, in the industrial dispute between the employers in relation to the Director, All India Institute of Medical Sciences, New Delhi and their workman, which was received by the Central Government on 30.03.2017.

[No. L-42011/32/2012-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

IN THE COURT OF SHRI AVTAR CHAND DOGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO.1, KARKARDOOMA COURT COMPLEX, DELHI

ID No. 138/2012

The General Secretary,
Delhi State Kamgar Union,
Bal Mukund Khand, Giri Nagar,
Kalkaji, New Delhi – 110 019

...Workman

Versus

The Director,
All India Institute of Medical Sciences,
Ansari Road,
New Delhi 110 029

...Management

AWARD

A reference was received from Central Government, Ministry of Labour and Employment vide letter No.L-42011/32/2012/IR(DU) dated 16.10.2012 under clause (d) of sub-section (1) and sub-section 2A of Section 10 of the Industrial Disputes Act, 1947(in short the Act) for adjudication of an industrial dispute, terms of which are as under:

‘Whether action of the management of AIIMS and M/s Prehari Protection System Pvt. Ltd. in terminating and non regularizing employment of Shri R.P. Singh and 285 others contract Security Guards is legal and justified? If not, what relief the workmen are entitled to?’

2. Briefly, the case of the claimants, (whose names are in the Annexure annexed to the statement of claim), is that they were appointed as security guards by the management of All India Institute of Medical Sciences (in short AIIMS) for the last many years, varying from 3 to 28 years. Nature of the work of security guards is necessarily of perennial nature and AIIMS management is using the device of contractors for work, which is of permanent nature. In fact, more than 1500 security guards are employed whole time by AIIMS. The same workers continued to work, which is in violation of section 10 of the Contract Labour (Regulation & Abolition) Act (in short CLRA Act) under different contractors, i.e M/s Prehari Protection System, M/s VNA Security Services Pvt. Ltd., Goodyear and Group 4. It is further pleaded by the claimants that this is being done just to avoid direct relationship of employer and employee between the workmen and AIIMS. Claimant had a number of issues with the management which has been pending for considerable time, like non-compliance of EPF Act, non-functional ESI cards, non-payment of washing allowance etc. It is the case of the claimant that on 15.12.2011, claimants were assured in writing that their pending issues would be resolved. On 16.12.2011 when the claimants reported for duties, they were illegally refused work by the management. No prior notice was given to the claimant before ordering their termination. Thus, termination of services of the

claimant herein is arbitrary, illegal and unjustified and the same is in violation of the Act as well as CLRA Act. Claimants took up the matter in the union and notice vide notice dated 19.12.2011, fully stating facts therein and also claiming reinstatement with full back wages as well as continuity of services of 286 security guards who were illegally refused duties by the management of AIIMS.

3. Claim was initially contested by the managements and AIIMS filed written statement and took preliminary objections of the claim being frivolous, misjoinder of necessary parties. It was also alleged that the claimants were neither employed by AIIMS nor were they terminated by AIIMS. Therefore, claimant has no cause of action against the management. It is also alleged that the claim has not espoused as per law as no resolution has been placed on record in proof of the same. On merits, management has denied most of the averments made in the statement of claim. It was also alleged that AIIMS does not fall within the definition of 'industry' as defined under Section 2(j) of the Act as AIIMS is not carrying out any activity which can be termed as business, trade or manufacturing activity. The main object of AIIMS is to carry out research activity and to impart education. Further AIIMS is not a commercial enterprise but engaged in welfare activities. It has been denied that on 16.12.2011 the claimants reported for duties but were refused work by AIIMS. It is also denied that services of the claimants were terminated by AIIMS. There is no question of violation of provisions of CLRA Act or the Act. In the end, AIIMS has claimed non-entitlement of any relief to the claimants herein.

4. Separate written statement was filed by M/s Prehari Protection System Pvt. Ltd. (in short the contractor), wherein preliminary objection regarding maintainability, non-verification of the claim and claimants not approaching the Tribunal with clean hands have been taken. It has been alleged that in fact the claimants demanded permanent engagement with AIIMS, which was not accepted by AIIMS and due to this claimants all of a sudden had gone on illegal strike for their illegal demands on 15.12.2011. Because of their illegal demands and strike, AIIMS immediately orally terminated the contract with the answering management, which was conveyed in writing on 31.12.2011. On merits, most of the material averments have not been admitted.

5. It is also mentioned in para 7 of the preliminary objections that services of the claimants herein were never terminated by the answering management and it was only change over of contract by AIIMS on 31.12.2011. Factual position is that there was agreement for change over of contract between AIIMS and the contractors without affecting change in the security personnel working with AIIMS. Accordingly, all the workers automatically stood absorbed by the new agency.

6. On merits, it was alleged that the answering management entered into agreement with AIIMS for providing security guards on 05.01.1993 for a period of 12 months and prior to that no worker of the answering management was working at AIIMS. After the expiry of the above agreement, management of AIIMS subsequently renewed the same from time to time. The answering management has not violated provisions of section 10 of the CLRA Act or any other law. It is also denied that the workman had a number of issues pending with the management regarding non-compliance of EPF, non functional ESI cards or non payment of washing allowance etc.

7. It is also denied that on 15.12.2011 the workmen were assured in writing that all pending issues would be resolved. Nothing was given to the claimant in writing by the answering management for resolving of any dispute either on 15.12.2011 or on any subsequent date. In fact, all the workmen suddenly went on illegal strike on 15.12.2011 due to which AIIMS immediately terminated contract agreement orally with the answering management and the same was communicated to the answering management later on in writing.

8. Against this factual, this Tribunal vide order 26.06.2013, on the basis of pleadings of the parties framed the following issues:

- (i) Whether contract awarded by AIIMS, M/s Prehari Protection System Pvt. Ltd. to supply manpower is sham or nominal?
- (ii) Whether AIIMS is not an industry?
- (iii) Whether dispute has not acquired status of industrial dispute for want of espousal by a union or considerable number of workmen serving in the establishment of the management?
- (iv) As in terms of reference

9. Claimant in support of its stand examined Ms.Poonam Solanki, Ms.Pushpa, Ms.Sudesh Sharma, Shri Manorajnan Prasad, Shri Budh Ram Singh, Ms.Mamta, Ms.Gulabo, Shri Sushil Kumar Mathur, Ms.Anima, Shri Deo Kumar, Shri Raj Singh, Shri Laxmi Narain, Ms.Medhu Bala, Ms.Sanju Devi, Ms.Satyawati, Shri Randhir Singh, Ms.Lajwanti, Shri Remender Debnath, MS.Saroj, Shri Gulzari Lal, Shri Sanjay Das, Shri Chhatter Pal, Shri R.P. Singh, Shri Puran Singh, Shri Pravin Solanki, Ms.Anita Yadav, Shri Nirdosh Kumar, Shri Yashveer, Shri Vipin Kumar and Dr. Mrigank as WW1 to Ex.WW30 and also relied upon various documents. Neither, AIIMS or the contractor, has

adduced any evidence in support of the stand taken in their pleadings. Management No.1 AIIMS was proceeded ex-parte vide order dated 20.05.2015 and Management No.2 contractor was proceeded ex-parte on 06.01.2016. Thereafter an application was moved by AIIMS for setting the ex-parte proceedings and ex-parte proceedings were set aside by this Tribunal and claimant did not file any reply to the same and in all fairness allowed the management to participate in the further proceedings. Accordingly, application was allowed subject to cost of Rs.1000.00. Even thereafter, none appeared on behalf of AIIMS and accordingly management was proceeded ex-parte on 30.08.2016. Thus, no evidence has been adduced by the managements to rebut the case of the claimant.

Findings on Issue No.2 and 3

10. Both these issues are legal in nature and as such they are being taken up together for the purpose of discussion. It is clear from pleadings of the managements that they have specifically taken objection that AIIMS is not a industry within the definition of section 2(s) of the Act. As such, reference made by the appropriate Government to this Tribunal is not legally maintainable. Question whether the management of AIIMS falls within the definition of industry is no longer res-integra as the same has been considered and finally decided by Hon'ble High Court in the case of AIIMS vs. Uddal (2014 (142) DRJ 569). In the said case, reference has also been made by the Hon'ble High Court of Delhi to earlier judgment in the case of AIIMS vs Raj Singh (2009) 1 LLJ 499.

11. Hon'ble High Court, after discussing the spectrum of the law on the subject, finally held that AIIMS is an industry within the meaning of Section 2(s) of the Act and contention of the management that Hon'ble High Court should await decision of the larger bench as ratio [Bangalore Water Supply & Sewerage Board vs. A. Rajappa & Ors.](#), (1978) 2 SCC 213 has been referred to larger bench and decision in this regard is awaited was outrightly rejected. In the said case (Bangalore Water Supply case (supra) also Hon'ble Supreme court has dealt at length with the ambit and scope of the expression 'industry' as used in the various industrial laws particularly in the Industrial Disputes Act and it is clear from ratio of the said judgement that hospitals has been held to fall within the definition of 'industry' In view of the emphatic pronouncement made in Bangalore Water Supply & Sewerage Board case (supra) as well as subsequent decision of the High Court in the case of Uddal case and Raj Kumar case (supra), there is hardly any room to entertain the contention that management of AIIMS is not an industry.

12. The other important question in the present case is whether the dispute in the present case has not attained status of an industrial dispute for want of espousal by the union or by considerable number of workmen in the establishment of the management.

13. It is clear from Para 13 statement of claim that notice dated 19.12.2011 detailing events relating to the present case was served upon the management, who has legally illegally refused the claimants to join duties on 16.12.2011. Dr.Mrigank, who was examined as WW30 and whose affidavit is Ex.WW30/A, has in Para 11 referred to the demand notice which was served upon the management and conciliation proceedings thereafter were also held but the same ultimately failed. It is also clear from perusal of Ex.WW30/1 that Delhi State Kamgar Union is duly registered vide registration No.2906, which shows that the above mentioned is duly registered. There is also complete details and name of the workmen in the documents. There is another document Ex.WW30/3 which shows the names of office bearers in the year 2008-09 as well as annual return for the year 2008. There is also certificate which shows that Delhi State Kamgaar Union has been registered under the Trade Union Act on 27.11.1989. Thus, the objection taken by the management in their written statement that the case was never espoused properly through the union is totally baseless and meritless as there is ample evidence on record to show that union of the claimant had duly taken up the matter with the management and finally matter was taken up for conciliation before the ALC, which ended in failure. It was thereafter reference was received by this Tribunal under Section 10 of the Act. It has been held in the case of Workers Union Vs. Seventh Industrial Tribunal (1994) 68 FLR 701 Calcutta that once a dispute is referred to the Tribunal by the appropriate Government presumption of espousal of industrial dispute is there. No doubt, this Tribunal has jurisdiction to adjudicate only industrial dispute once the case of the workman has been duly espoused or sponsored by the union, the same would be legally enough to meet requirement of law. There is no definition of espousal given in the Act or any other law. However, expression also means that the dispute of the workman is adopted by the union or considerable number of workman belonging to that union in its meeting as its own dispute and large number of workmen have given support to the cause of such industrial dispute.

14. In view of the above discussion, it is held that there is an industrial dispute which requires adjudication by this Tribunal and the same has been duly espoused. As said earlier, management of AIIMS is held to be an industry within the meaning of 2(j) of the Act and hence, both these issues are decided accordingly.

Findings on Issue No.1

15. Now the primary question before this Tribunal is whether the contract awarded by the management of AIIMS to the contractor management No.2 is sham and nominal. In this regard, it is appropriate to refer to the pleadings contained in the statement of claim. It is clear from averments made in Para 5 of the statement of claim that the claimant has held

management No.2 to be a sham contractor. It was strongly urged on behalf of the claimant that there is ample evidence on record to suggest that the claimants were doing work and service in the premises of AIIMS and management of AIIMS was exercising full and effective control over claimants regarding allocation of duties as security guards and none of the workers has ever seen the face of the contractor who was not having any liaison with the claimants herein. The so called contract between the management No.1 and management No.2 has been alleged to be sham and nominal and all the claimants in their respective affidavits have clearly supported the averments contained in the statement of claim. It is also clear from the Entry card/ID Card of the claimants that the place of their duties is at AIIMS and the same has been issued by management No.2 M/s Prehari Protection System Pvt. Ltd.

16. There is no evidence adduced by the management so as to prove that the so called contract which was entered into between management No.1 and Management No.2 for the purpose of engaging security guards in the premises of AIIMS is genuine. Perusal of the record also shows that most of the workmen were issued ESI cards as is clear from Ex.WW1/14 to Ex.WW1/17, Ex.WW2/1, Ex.WW3/1, Ex.WW3/4, Ex.3/5, Ex.WW4/3, Ex.4/7, Ex.WW4/8, Ex.WW5/2 to Ex.WW5/5, Ex.WW6/3, Ex.WW6/5, Ex.WW7/3, Ex.WW9/2, Ex.WW9/5, Ex.WW10/2, Ex.WW10/3, Ex.WW11/4, Ex.WW11/5, Ex.WW12/1, Ex.WW15/3, Ex.WW15/4, Ex.WW16/3, Ex.WW17/2, Ex.WW18/3, Ex.WW19/2, Ex.WW21/3, Ex.WW25/1, Ex.WW25/2, Ex.WW25/7, Ex.WW26/1 and Ex.WW26/33. They were also issued ID Cards Ex.WW1/11 to Ex.WW1/13, Ex.WW2/2, Ex.WW2/3, Ex.WW3/2, Ex.WW3/3, Ex.WW4/1, Ex.WW4/9, Ex.WW5/1, Ex.WW6/1, Ex.WW6/2, Ex.WW6/4, Ex.WW7/1, Ex.WW7/2, Ex.WW8/1, Ex.WW8/2, Ex.WW9/1, Ex.WW9/3, Ex.WW9/4, Ex.WW10/1, Ex.11/1, Ex.WW 11/2, Ex.WW 11/6, Ex.WW12/3, Ex.WW13/1, Ex.WW14/1, Ex.WW15/2, Ex.WW17/1, Ex.WW18/1, Ex.WW18/2, Ex.WW19/1, Ex.WW20/1, Ex.WW21/1, Ex.WW21/2, Ex.WW22/2, Ex.WW22/3, Ex.WW24/1, Ex.WW24/2, Ex.WW25/5, Ex.WW25/6, Ex.WW25/9 Ex.WW25/10, Ex.WW26/2, Ex.WW27/1 and Ex.WW29/1 . Thus, one thing is clear from perusal of the documents filed by the claimants that they were engaged as security guards and were performing duties in the premises of AIIMS. Statement of all the workmen in the case in hand is clearly suggestive of the fact that they were working for AIIMS management and were under their control and supervision. They have also denied the material suggestion given to them in their cross examination and specifically stated that they were working in the premises of AIIMS since many years, varying from 1999 to 2007, for different period. There is no evidence on record that Management No.2 was a duly licenced contractor as required under Section 12 of the CLRA Act nor there any evidence on record to show that the principal employer AIIMS was duly registered as required under Section 7 of the CCLRA Act. It is clear from perusal of section 7 of the CLRA Act that every principal employer or establishment to which the Act applies has to file application to the registered office in the prescribed manner for registration of the establishment and contravention of provisions is also an offence under the law. Similarly, Section 12 of the CLRA Act specifically envisages that certificate of registration is mandatorily required by the contractor and no contractor can execute any work or engage contract labour unless he has obtained such a licence from the competent authority in the prescribed manner under the law.

17. In this connection, reference is made to the ratio of judgement by a Constitution Bench of Hon'ble Supreme Court in Steel Authority of India and others Vs. National Union Waterfront Workers and others (2001) 7 SCC 1) wherein Supreme Court was primarily concerned with the meaning of the expression 'appropriate Government' as used in Section 2(1)(a) of the Contract Labour (Regulation and Abolition) Act, 1970 and in Section 2(a) of the Industrial Disputes Act, 1947 in relation to State Government or the Central government. The other issue involved before the Apex Court was the automatic absorption of contract labour in the establishment of the principal employer as a consequence of abolition notification issued under Section 10A of the CLRA Act 1970. Supreme Court while partly overruling the judgement in Air India Statutory Corporation vs. United Labour Union (1997 (9) SCC 377) prospectively held that neither section 10 of the CLRA Act nor any other provisions of the Act, whether expressly or by necessary implication, provides for automatic absorption of the contract labour on issuance of notification under the said section, prohibiting contract labour and consequently principal employer is not required to absorb contract labour working in such establishments. In the said case, another incidental issue whether relationship of master and servant between the principal employer and contract labour emerges after issuance of notification under section 10 of the CLRA Act was also considered by the Court. After discussing the entire spectrum of the case law on the subject in Para 125 of the judgement, it was held as under:

(3) Neither Section 10 of the CLRA Act nor any other provision in the Act, whether expressly or by necessary implication, provides for automatic absorption of contract labour on issuing a notification by appropriate Government under sub-section (1) of [Section 10](#), prohibiting employment of contract labour, in any process, operation or other work in any establishment. Consequently the principal employer cannot be required to order absorption of the contract labour working in the concerned establishment;

“(4) We overrule the judgment of this Court in Air India case prospectively and declare that any direction issued by any industrial adjudicator/any court including the High Court, for absorption of contract labour following the judgment in Air India case shall hold good and that the same shall not be set aside, altered of

modified on the basis of this judgment in cases where such a direction has been given effect to and it has become final.”

(5) On issuance of prohibition notification under Section 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance with various beneficial legislations so as to deprive the workers of the benefit there-under. If the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the establishment concerned subject to the conditions as may be specified by it for that purpose in the light of para 6 hereunder.

(6) If the contract is found to be genuine and prohibition notification under Section 10(1) of the CLRA Act in respect of the establishment concerned has been issued by the appropriate Government, prohibiting employment of contract labour in any process, operation or other work of any establishment and where in such process, operation or other work of the establishment the principal employer intends to employ regular workmen, he shall give preference to the erstwhile contract labour, if otherwise found suitable and, if necessary, by relaxing the condition as to maximum age appropriately, taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications.”

18. A critical examination judgement in SAIL case (supra) would show that this judgement shines like a pole star in the galaxy of precedents in the field of industrial laws and provides a beacon light to all those who are lost in the mist of legal confusion. It is further clear from the above judgements that purpose of issuance of notification appears to be clear and Parliament has intended to create a bar by incorporating provision on engagement of contract labour in any establishment covered by such prohibition notification. Thus, no option is left with the employer to employ contract labour in the category of jobs mentioned in the said notification. In fact, Section 10 is enacted to work as a permanent solution to the problem and there is no legal justification for engagement of contract labour after issuance of such notification issued under Section 10 of the CLRA Act and in case of violation, employer can be imposed with punishment under Section 21 to 23 of the CLRA Act.

19. Supreme Court in International Airport Authority of India vs. International Air Cargo Workers Union (2009 (13) SCC 37) again considered the question of contract labour as well as impact of issuance of notification under Section 10 of the CLRA Act, and held as under:

‘20. But where there is no abolition of contract labour under section 10 of CLRA Act, but the contract labour contend that the contract between principal employer and contractor is sham and nominal, the remedy is purely under the [ID Act](#). The principles in Gujarat Electricity Board continue to govern the issue. The remedy of the workmen is to approach the industrial adjudicator for an adjudication of their dispute that they are the direct employees of the principle employer and the agreement is sham, nominal and merely a camouflage, even when there is no order under section 10(1) of CLRA Act. The industrial adjudicator can grant the relief sought if it finds that contract between principal employer and the contractor is sham, nominal and merely a camouflage to deny employment benefits to the employer and that there is in fact a direct employment, by applying tests like: who pays the salary; who has the power to remove/dismiss from service or initiate disciplinary action; who can tell the employee the way in which the work should be done, in short who has direction and control over the employee. But where there is no notification under section 10 of the CLRA Act and where it is not proved in the industrial adjudication that the contract was sham/nominal and camouflage, then the question of directing the principal employer to absorb or regularize the services of the contract labour does not arise. The tests that are applied to find out whether a person is an employee or an independent contractor may not automatically apply in finding out whether the contract labour agreement is a sham, nominal and is a mere camouflage. For example, if the contract is for supply of labour, necessarily, the labour supplied by the contractor will work under the directions, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer, if the salary is paid by contractor, if the right to regulate employment is with the contractor, and the ultimate supervision and control lies with the contractor. The principal employer only controls and directs the work to be done by a contract labour, when such labour is assigned/allotted/sent to him. But it is the contractor as employer, who chooses whether the worker is to be assigned/allotted to the principal employer or used otherwise. In short worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decides where the employee will work and how long he will work and subject to what conditions. Only when the contractor assigns/sends the worker to work under the principal employer, the worker works under

the supervision and control of the principal employer but that is secondary control. The primary control is with the contractor.

20. Thus, applying the principle of law discussed above to the controversy in the present case, it is clear from the evidence adduced by the claimants herein that they were admittedly working in the premises of AIIMS. They have specifically stated in their respective affidavits that the so called contract between Management No.1 and Management No.2 regarding engagement of security guards is sham and bogus and nominal in nature. Management has also not entered into the witness box so as to support and prove the stand taken in their respective pleadings, as such, this Tribunal can draw adverse inference against the management.

21. Resultantly, this Tribunal is left with no choice except to accept the case of the claimants herein, whose evidence is cogent and consistent in nature regarding their engagement, performance of duties and overall control of the management of AIIMS in respect of performance of their duties in the premises of AIIMS. Management No.2, rather has admitted in their written statement that the agreement was orally terminated by AIIMS because of illegal demands and strike by the claimants for their illegal demands on 15.12.2011. Thereafter on 31.12.2011, as is clear from the written statement of management No.2, it was communicated to them in writing regarding termination of the contract. Neither the said agreement has been filed nor proved in accordance with law. Thus, the so called agreement between management No.1 and management No.2 can be termed as sham or nominal documents and management No.2 simply appears to be a name lender so that the claimants herein do not claim themselves to be in the employment of management No.1. This is really pernicious practice being followed by most of the establishments in Delhi and it has dealt a crippling blow to the various industrial laws which have been enacted for the welfare and safety of the workers. Thus, the so called agreement is held to be sham, nominal and a camouflage.

22. Now the residual question whether termination of the services of the claimants Shri R.P. Singh and 285 others is legal and justified. Admittedly as is clear from the stand of the management, no notice in writing was given before ordering their termination. Claimants have led cogent evidence on record to prove that they were regularly performing their duties as security guards and it is not the case of the management that they have not completed 240 days in a calendar year so as not to attract provisions of Section 25F of the Act as no one months notice in writing nor salary in lieu thereof has been paid to the claimant before ordering their termination. Termination of these claimants from services is apparently in violation of Section 25 F of the Act, which requires that one months notice or pay in lieu thereof has been paid to the claimants before their termination. Admittedly, no such notice was issued nor one months pay in lieu thereof was given to the claimant. This clearly shows that the management has committed gross violation of provisions of Section 25-F of the Act, which clearly provides that even services of workmen who are employed on daily basis and has worked for more than 240 days in a calendar year or for 12 months cannot be terminated or retrenched unless workmen has been given one month's notice in writing, indicating reasons for such retrenchment or the workman has been paid salary of one month in lieu of such notice. There is a long line of decisions of the Hon'ble High Courts as well as Apex Court that violation of the above provisions would render action of the management to be illegal and void under the law. This view has been reiterated in the case of Ajay Pal vs Haryana Warehousing Corporation (AIR (2015) Lab.IC 3765). Hon'ble Apex Court in the case of Umralla Gram Parishad Vs. The Secretary, Municipal Employees Union And Ors. (2015) Lab.IC 3765 also dealt with provisions of Section 25-t read with section 2 (ra) of the Act, in case of safai kaamdaar employed by the Parishad. The work which was being done by daily kaamdaar was the same as those of the regular workmen. There was disparity in payment of wages between permanent and contract workmen. Same was held to be unfair labour practice and plea of the Parishad that their financial position was not strong so as to pay salary equal to that of the permanent workman was rejected. Hon'ble Apex Court ordered to treat the services of such workmen permanent and pay them regular pay scale which was being paid to the permanent safai kaamdars.

23. As a sequel to the discussions made herein above, it is held that termination and non-regularization of Shri R.P. Singh and 285 other claimants is legal and justified and they are liable to be reinstated with back wages and their case for regularization is liable to be considered in terms of policy, if any in operation. An award is, accordingly, passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : March 29, 2017

A. C. DOGRA, Presiding Officer

नई दिल्ली, 26 अप्रैल, 2017

का.आ. 1152.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ब्रॉडकास्टिंग इंजीनियरिंग एंड कंसल्टेंट इंडिया लिमिटेड, नई दिल्ली का प्रबंधन व अन्य एवं उनके कर्मचारी के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं. 1, दिल्ली के पंचाट (संदर्भ संख्या 176/2016) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20.04.2017 को प्राप्त हुआ था।

[सं. एल-42012/88/2016-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 26th April, 2017

S.O. 1152.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (ID Case No. 176/2016) of the Central Government Industrial Tribunal-cum-Labour Court No.1, Delhi as shown in Annexure, in the industrial dispute between the employers in relation to the Management of Broadcasting Engineering & Consultant India Ltd., New Delhi & Others and their workman, which was received by the Central Government on 20.04.2017.

[No. L-42012/88/2016-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

IN THE COURT OF SHRI AVTAR CHAND DOGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO.1, KARKARDOOMA COURT COMPLEX, DELHI

ID No. 176/2016

Shri Shiv Charan Dhyani,
R/o A-80, Pradhan Enclave, Burari,
Delhi – 110 084

...Workman

Versus

1. The Management of Broadcasting Engineering & Consultant India Ltd.,
14-B, Ring Road, IP Estate,
New Delhi 110 002
2. M/s Vayudoot Security Services,
D-7, Sector 7, NOIDA, Gautam Budh Nagar,
Uttar Pradesh

...Managements

AWARD

Central Government, vide letter No.L-42012/88/2016-IR(DU) dated 23.11.2016/02.12.2016, referred the following industrial dispute to this Tribunal for adjudication:

“Whether the employment of the workman Shri Shiv Charan Dhyani in the establishment of M/s. Broadcast Engineering Consultants India Ltd. through M/s. Vayudoot Security Services Pvt. Ltd. has been terminated illegally and/or unjustifiably, and if so what relief is he entitled to and what directions are necessary in this respect?

2. In the reference order, the appropriate Government commanded the parties raising the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to the opposite parties involved in the dispute. Despite directions so given, Shri Bachan Singh Rana opted not to file his claim statement with the Tribunal.
3. On receipt of the above reference, notice was sent to the workman as well as the managements. However, the postal article sent to the workman, was received back with the remarks ‘No such person’. Address mentioned on the letter is the same as that mentioned in the reference received from the appropriate Government. As such, there is no other address available with the Tribunal. Hence, this Tribunal is left with no choice, except to pass a ‘No

Dispute/Claim' award. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : April 11, 2017

A. C. DOGRA, Presiding Officer

नई दिल्ली, 26 अप्रैल, 2017

का.आ. 1153.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार राजदूत, द गाम्बिया दूतावास, नई दिल्ली के माध्यम से गाम्बिया उच्चायोग का प्रबंधन एवं उनके कर्मचारी के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं. 1, दिल्ली के पंचाट (संदर्भ संख्या 73/2016) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20.04.2017 को प्राप्त हुआ था।

[सं. एल-42025/03/2017-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 26th April, 2017

S.O. 1153.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (ID Case No. 73/2016) of the Central Government Industrial Tribunal-cum-Labour Court No.1, Delhi as shown in Annexure, in the industrial dispute between the employers in relation to the Management of the Gambia High Commission, through the Ambassador, The Gambia Embassy, New Delhi and their workman, which was received by the Central Government on 20.04.2017.

[No. L-42025/03/2017-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

IN THE COURT OF SHRI AVTAR CHAND DOGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO.1, KARKARDOOMA COURT COMPLEX, DELHI

ID No. 73/2016

Shri Gopal Sarkar, S/o Shri Sukumar Sarkar,
through General Secretary, Delhi Labour Union,
Agarwal Bhawan,
GT Road, Tis Hazari,
Delhi – 110 054

...Workman

Versus

The Management of the Gambia High Commission, through
The Ambassador, The Gambia Embassy,
B-19, Vasant Marg, Vasant Vihar,
New Delhi – 110 057

...Management

AWARD

Claim has been filed by the claimant under Section 2-A of the Industrial Disputes Act, 1947 (in short the Act) as 45 days stood expired from the date of making his application before the Conciliation Officer and no reference is required under the Act by the Tribunal from the appropriate Government after the said period. It is averred by Shri Gopal Sarkar, the claimant herein, that he joined employment with the management in March 2009 as security guard/chowkidar. Initially, he was posted in the Embassy at B-19, Vasant Vihar, New Delhi. Thereafter, for the last 1½ years, the claimant was posted at the residence of the Ambassador at Rahul Farm. Claimant was also issued letter of appointment by the management and was initially getting a salary of Rs.8500.00. Subsequently, his salary was enhanced to Rs.10,000.00 p.m. Services of the claimant was also confirmed vide letter dated 19.03.2014. In fact, there were only two security guards with the management who were doing 12 hours duty but they were not being paid overtime salary. The claimant was demanding overtime salary in the proper pay scale and all of a sudden he was dismissed vide letter dated 01.10.2014. Dismissal of the claimant vide letter dated 01.10.2013 is totally unjust and mala fide and is in breach of Section 25-F, G and H of the Act read with Rule 76, 77 and 78 of the Industrial Dispute (Central) Rule 1957. It is the case of the claimant that he served demand notice through the union upon the

management vide communication dated 13.11.2014 by registered A.D. Since there was no reply from the management, as such, it was presumed it was rejected. Finally, the claimant has prayed for setting aside order of dismissal and for reinstatement in service with back wages.

2. Management was put to notice but none appeared on behalf of the management, as a result of which management was proceeded ex-parte on 08.08.2016.

3. Claimant, in support of his case, examined himself as WW1 and tendered in evidence his affidavit Ex.WW1/A. He has also tendered in evidence documents Ex.WW1/1 to Ex.WW1/11.

4. I have heard Shri Abhinav Kumar, A/R for the claimant.

5. It is clear from the pleadings of the claimant as well as evidence on record that the claimant was appointed vide letter dated 04.03.2009 Ex.WW1/4 as security at High Commission of Gambia in India for a period of three months initially. There is also mention that the claimant was to be confirmed on the post if his performance and conduct is found to be satisfactory. There is further mention in the above letter that salary of the claimant is Rs.8500.00 per month, along with allowances for medical treatment etc. In the penultimate para, there is mention that appointment can be terminated either by the workman or by the Embassy by issuance of one weeks' notice or wages in lieu of one weeks' notice.

6. It is clear from the evidence on record that no one weeks' notice was served upon the claimant nor salary for the said period was paid to the claimant before his dismissal. There is also letter of confirmation dated 19.03.2014, which shows that appointment of the claimant as security guard has not been confirmed with effect from 19.03.2014. This clearly shows that conduct of the claimant was found to be satisfactory as a result of which he was confirmed on the post. Evidence adduced by the claimant in his affidavit Ex.WW1/A is on similar lines as the averments contained in the statement of claim. It is further clear that the claimant was demanding payment of salary in proper pay scale, which appears to have not been paid to the claimant and ultimately it resulted in issuance of letter of dismissal dated 01.10.2014 Ex.WW1/10. There is also nothing on record to show that any domestic or disciplinary proceedings were conducted against the claimant herein by the management before ordering his dismissal. Admittedly, claimant is continuously in the employment of the management since March 2003 till the date of his dismissal vide letter dated 01.10.2014 Ex.WW1/10 issued by the management against the claimant. Though, it is mentioned in the said letter that several warning letters were given to the claimant regarding his misbehavior, such as coming to work in a drunken condition and bringing people from outside etc, but there is no evidence worth the name to support the allegations as mentioned in the letter of dismissal Ex.WW1/10. Law is now fairly settled from the various decisions of the Hon'ble Apex Court as well as various High Courts that a person in continuous employment of the management and has worked for more than 240 days in a calendar year preceding his termination, in that eventuality, it is incumbent upon the management to have issued one months' notice in writing or one months' pay in lieu thereof giving reasons for the retrenchment. In the case on hand, nothing of this kind has been done by the management, who has issued letter of dismissal Ex.WW1/10 completely in breach of the provisions of Section 25-F of the Act. Even services of a casual workman who has completed 240 days in a calendar year cannot be terminated in this manner and the action of the management, in breach of the above provision, would render the same to be totally illegal under any authority under the law.

7. As discussed above, there not even a shred of evidence on record to show that the claimant has committed any act of misconduct prior to his dismissal. The very fact that the management has not appeared to contest the case also shows that the management is acting in an arbitrary manner. This Tribunal is also entitled to draw adverse inference against the management for not rebutting the averments contained in the statement of claim or adducing any evidence justifying dismissal of the claimant. Resultantly, action of the management is held to be per se illegal and in breach of Section 25F of the Act. There is no evidence on record to suggest that the claimant herein was gainfully employed during the period after his termination. When action of the management is totally arbitrary and illegal and claimant is a confirmed workman and his dismissal is in gross violation of provisions of Section 25F of the Act, this Tribunal is of the view that the claimant is entitled for reinstatement with full back wages.

8. As a sequel to my above discussion, it is held that order of dismissal of the claimant vide communication Ex.WW1/10 is totally arbitrary and illegal as the same is in gross violation of Section 25-F of the Act. As a result of the above, it is further held that the claimant is entitled for reinstatement with full back wages. An award is, accordingly, passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : April 13, 2017

A. C. DOGRA, Presiding Officer

नई दिल्ली, 26 अप्रैल, 2017

का.आ. 1154.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मानव संसाधन विकास मंत्रालय, उच्च शिक्षा विभाग, नई दिल्ली व अन्य एवं उनके कर्मचारी के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं. 1, दिल्ली के पंचाट (संदर्भ संख्या 163/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11.04.2017 को प्राप्त हुआ था।

[सं. एल-42025/03/2017-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 26th April, 2017

S.O. 1154.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (ID Case No. 163/2015) of the Central Government Industrial Tribunal-cum-Labour Court No.1, Delhi as shown in Annexure, in the industrial dispute between the employers in relation to the Ministry of Human Resources Development, Department of Higher Education, New Delhi & Others and their workman, which was received by the Central Government on 11.04.2017.

[No. L-42025/03/2017-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

IN THE COURT OF SHRI AVTAR CHAND DOGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO.1, KARKARDOOMA COURT COMPLEX, DELHI

ID No. 163/2015

Shri Ajit Singh S/o Shri Madho Ram, through
Samast Delhi Karamchari Union Regd.
52C, Okhla Industrial Area, Phase 3,
New Delhi - 110 020

...Workman

Versus

1. Ministry of Human Resources Development
Department of Higher Education,
Government of India, Shastri Bhawan,
New Delhi – 110 001
2. M/s. EdCIL India Limited,
(A Government of India Enterprise)
EDCIL House, 18-A, Sector 16-A,
NOIDA – 201 301, Uttar Pradesh

...Management

AWARD

Present dispute has been raised under the provisions of sub-section (2) of section 2-A of the Industrial Disputes Act, 1947 (in short the Act). Claimant presents that a period of 45 days stood expired from the date of making his application before the Conciliation Officer. Claim was filed by the claimant Shri Ajit Singh with the averments that he was engaged on 14.12.2010 as helper by the Ministry of Human Resources Development (in short management No.1) through M/s. EDCIL India Ltd. (in short management No.2) and he was performing his duties sincerely and diligently. He was paid wages of Rs.8554.00 at the time of his initial appointment. Management No.1, is the principal employer and management No.2 is the contractor. Management No.1 was having supervisory as well as administrative control over the claimant. It is the case of the claimant that the management promoted him to the post of MTS with effect from 10.01.2013 as his performance was satisfactory. However, the claimant was deprived of facility of casual leave, overtime payment etc. though he has complained regarding this several times to the management. Management was in the habit of obtaining signatures of the claimant on blank papers and when he resisted to the same, he was given threat of termination of job by the management. Claimant was not paid salary for January 2015. Finally he was terminated from the job on 02.02.2015 without any show-cause notice or any salary in lieu of such notice as required under the law. The termination is unlawful and unjust, amounting to unfair labour practice. Thereafter, claimant took up the matter with his union and the union finally vide letter dated 19.02.2015 wrote to the management regarding this, but no reply was given by the management. Thereafter, matter was also referred to the Assistant Labour Commissioner.

However, nobody from the side of the management turned up nor the claimant was taken back in service. Finally, claimant has prayed that his order of termination dated 02.02.2015 be declared illegal and unjustified and he be reinstated in service with back wages.

2. In fact, none appeared on behalf of Ministry of HRD management No.1 since inception, hence management No.1 was proceeded ex-parte on 18.12.2015.

3. M/s. Ed.CIL India Ltd., Management No.2 has filed written statement taking preliminary objections, inter alia of maintainability, concealment of facts, claimant not approaching the Tribunal with clean hands etc. On merits, it was admitted that the claimant was initially engaged vide letter dated 08.12.2010 for one year on the project and services were coterminous with the project. However, his services were extended based on his performance and requirement of the project. His consolidated salary was Rs.6000.00 per month. Later on, post of peon/helper was re-designated as MTS. It is denied that signatures of the claimant were being obtained on blank papers. His salary used to be credited in his bank account as per terms and conditions of the contract. Claimant worked from December 2010 to January 2015 and during that period he never raised any complaint. Management denied the other allegations of commission of unfair labour practice etc.

4. Claimant filed rejoinder to the written statement filed by management No.2 and reasserted the stand taken in the statement of claim.

5. This Tribunal, vide order dated 16.02.2016, based on the pleadings of the parties, framed the following issues:

- (i) Whether the workman has been wrongly and illegally terminated by Management No.1, as alleged?
- (ii) Whether claim petition is not legally maintainable in view of the preliminary objections?

6. Claimant, in order to prove his case against the management examined himself as WW1 and tendered in evidence his affidavit Ex.WW1/A and documents Ex.WW1/1 to Ex.WW1/3. Management, in order to rebut the case of the claimant, examined Shri Sunil Kumar Mathur as MW1 who tendered in evidence his Ex.MW1/A as well as documents Ex.MW1/1 to Ex.MW1/6.

7. I have heard Shri B.S. Rawat, A/R for the claimant and Shri K.C. Dubey, A/R for the management No.2.

Issue No.2

8. Issue No.2 is being taken up first as it is regarding various preliminary objections taken by the management in its written statement. There is nothing on record to suggest that as to how the claim is not legally maintainable under Section 2-A of the Act. Admittedly, no reference has been received by this Tribunal when the matter was taken for consideration by office of the Assistant Labour Commissioner. In such an eventuality, this Tribunal can legally take cognizance of the case after expiry of period of 45 days from the date of making his application before the Conciliation Officer. Further, preliminary objection of perjury has been taken by the management but there is no specific evidence on record to suggest as to what kind of perjury was committed by the claimant nor the management has pointed out anything in this regard. There is no question of commission of fraud by the claimant, as it is his statutory right to approach this Tribunal for redressal of his grievance. It is further clear from perusal of Ex.WW1/1 that the case of the claimant was considered by the union, who has written to the management for his reinstatement. However, no reply has been given by the management to the above letter. There is also certificate dated 08.07.2015 issued by the Assistant Labour Commissioner, which clearly shows that the case of the claimant regarding termination of his service was taken up in conciliation on 14.05.2015, 09.06.2015 and 08.07.2015. However, no settlement could be arrived at. Mandatory period of 45 days as provided under Section 2-A of the Act had also expired on 29.06.2015. Thus, it is from this date, that the claimant has got legal right to initiate proceedings under Section 2-A of the Act. In view of this, various preliminary objections taken by the management are held to be not legally tenable. The issue is decided accordingly.

Issue No.1

9. The main question before this Tribunal is whether services of the claimant has been terminated illegally by the management. In this regard, it is appropriate to refer to the pleadings of the parties. It is clear from averments made in the statement of claim that the claimant was initially engaged by the management on 14.12.2010. There is also letter Ex.WW1/2 dated 07.04.2010 which shows that the claimant was called for interview for the post of helper on contract basis by the Assistant Manager of management No.2. Perusal of office order Ex.WW1/3 also shows that the claimant was engaged as helper in Higher Education Department, Ministry of HRD project, which was extended further from 13.12.2012 to 31.10.2013. Management in para 5 of the preliminary objections of the written statement has also admitted that the claimant was initially engaged vide letter dated 08.12.2010. This clearly shows that engagement of the claimant was on contract basis vide order dated 08.12.2010.

10. There is no merit in the submission of the management that engagement of claimant was qua a particular project for a specific period. Moreover, there is no mention of the name and the period of the project in the pleadings of the

management to prove such contract. In fact, no copy of the contract has been filed by the management so as to show as to for what period and for what particular work services of the claimant was taken as helper by the management. It is not out of place to mention here that the management was rather satisfied with the work of the claimant, as a result of which claimant was given extension and there was revision of his salary. Salary slip of the claimant is Ex.MW1/3, which shows that the gross monthly salary of the claimant was Rs.8850.00 for the period 25.12.2014 to 24.01.2015. Details of salary for the various period as well as other helpers is annexed with this document, which was not disputed by the learned authorized representatives appearing on either side.

11. During the course of arguments, learned A/R for the management primarily harped on the plea that since engagement of the claimant admittedly was of helper and that too on contract basis, as such there is no legal requirement of service of any notice in terms of provisions of Section 25-F of the Act nor conditions of contract provides for issuance of any such notice before termination. This submission of the management is totally meritless for the reasons that no contract has been filed by the management so as to prove the same. Moreover, there is clear evidence on record that since the time of his engagement right from December 2010 till 02.02.2015, there is no break in the service of the claimant who was sincerely and regularly performing his duties. Engagement of a person as helper/casual labour or for that matter contract worker on casual basis does not mean that the management can follow the policy of 'hire and fire' in an arbitrary manner and throw out a poor claimant in a whimsical manner at any time.

12. It has also been held by the Hon'ble Apex Court in the case of Devender Singh Vs. MC Sanaur (AIR (2001) SCC 2532) wherein while interpreting provisions of Section 2(s) of the Act, which deals with definition of workman, as under:

'The source of employment, the method of recruitment, the terms and conditions of employment/contract of service, the quantum of wages/pay and the mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of [Section 2\(s\)](#) of the Act.

The definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. There is nothing in the plain language of [Section 2\(s\)](#) from which it can be inferred that only a person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman.

15. Whenever an employer challenges the maintainability of industrial dispute on the ground that the employee is not a workman within the meaning of [Section 2\(s\)](#) of the Act, what the Labour Court/Industrial Tribunal is required to consider is whether the person is employed in an industry for hire or reward for doing manual, unskilled, skilled, operational, technical or clerical work in an industry. Once the test of employment for hire or reward for doing the specified type of work is satisfied, the employee would fall within the definition of 'workman'.

13. In view of the above legal position, it is clear that the workman herein is a 'workman' within the definition of Section 2(s) of the Act.

14. There is ample evidence on record to suggest and show that the management has even re-engaged some helpers after termination of the claimant herein. This fact has even been admitted by Shri Sunil Kumar Mathur MW1 in his cross examination. He has clearly admitted that the claimant was engaged with the management from December 2010 to January 2015 at the project under Ministry of HRD by EdCIL (India) Ltd. which is a public sector enterprise. He has also made reference to letter Ex.MW1/1 whereby management was advised that services of 14 helpers should be utilized in some other project by Ed.CIL, Management No.2. There is nothing on record to suggest that as to under what circumstances the claimant herein could not be engaged in such other project when there is specific letter to this effect from the Ministry. He has further admitted that no notice was issued to the claimant before his termination, as this was not necessary as he was engaged for a particular project, which came to an end in December 2014. Moreover, management No.2 was already advised to deploy such helpers in some other project as is clear from Ex.MW1/1. He has, further, made a vital admission that the claimant worked continuously for 4 years and there was no allegation against him. He further admitted that services of Shri Raju, who has hardly worked for 2 years was retained whereas the claimant who has served for more than 4 years was terminated. This clearly shows that the management was acting in a most arbitrary manner while terminating services of the claimant herein. He has, further, admitted that salary of regular MTS is Rs.17,772.00 whereas those of similar workers working as daily wager/contract basis was getting only Rs.12,913.00. This was as per service agreement between contractor and the principal employer, but no such document has been filed by the management so as to show the terms and conditions of contract. He has also admitted that no enquiry was conducted against claimants at any time and no retrenchment was paid to the claimant before his termination. Even as per statement of this witness, claimant has worked till 31.01.2015.

15. It is crystal clear from resume of evidence adduced that the claimant herein has worked continuously right from December 2010 to 30.01.2015. His initial appointment was done by following due procedure as he was called for

interview. There were other co-workers who were doing similar job to but junior to the claimant herein were retained whereas his services were terminated. This clearly shows that the management has committed gross violation of provisions of Section 25-F of the Act, which clearly provides that even services of workmen who are employed on daily basis and have worked for more than 240 days in a calendar year or for 12 months cannot be terminated or retrenched unless workmen has been given one month's notice in writing, indicating reasons for such retrenchment or the workman has been paid salary of one month in lieu of such notice. There is a long line of decisions of the Hon'ble High Courts as well as Apex Court that violation of the above provisions would render action of the management to be illegal and void under the law. This view has been reiterated in the case of Ajay Pal vs Haryana Warehousing Corporation (AIR (2015) Lab.IC 3765). Hon'ble Apex Court in the case of Umrula Gram Parishad Vs. The Secretary, Municipal Employees Union And Ors. (2015) Lab.IC 3765 also dealt with provisions of Section 25-t read with section 2 (ra) of the Act, in case of safai kaamdaar employed by the Parishad. The work which was being done by daily kaamdaar was the same as those of the regular workmen. There was disparity in payment of wages between permanent and contract workmen. Same was held to be unfair labour practice and plea of the Parishad that their financial position was not strong so as to pay salary equal to that of the permanent workman was rejected. Hon'ble Apex Court ordered to treat the services of such workmen permanent and pay them regular pay scale which was being paid to the permanent safai kaamdars.

16. Claimant has specifically stated in his affidavit that he is not gainfully employed after termination of his job. Evidence adduced by the claimant in the present case is quite specific and satisfactory to show that action of the management in terminating services of the claimant is totally illegal and void under the law. Since in the present case, engagement of the claimant was done by following due procedure and posts were also vacant when his services was terminated, as such, this Tribunal is of the firm view that claimant is entitled for reinstatement with full back wages as his termination has been found to be totally illegal. An award is, accordingly, passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : April 10, 2017

A. C. DOGRA, Presiding Officer

नई दिल्ली, 26 अप्रैल, 2017

का.आ. 1155.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार आयुक्त, उत्तर दिल्ली नगर निगम, नई दिल्ली एवं उनके कर्मचारी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं. 1, दिल्ली के पंचाट (संदर्भ संख्या 77/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20.04.2017 को प्राप्त हुआ था।

[सं. एल-42011/154/2014-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 26th April, 2017

S.O. 1155.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (ID Case No. 77/2015) of the Central Government Industrial Tribunal-cum-Labour Court No.1, Delhi as shown in Annexure, in the industrial dispute between the employers in relation to the Commissioner, North Delhi Municipal Corporation, New Delhi and their workman, which was received by the Central Government on 20.04.2017.

[No. L-42011/154/2014-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

IN THE COURT OF SHRI AVTAR CHAND DOGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO.1, KARKARDOOMA COURT COMPLEX, DELHI

ID No. 77/2015

Shri Dharmendar Mahto,
C/o Municipal Employees Union,
Agarwal Bhawan, GT Road,
Tis Hazari, New Delhi - 110 054

...Workman

Versus

The Commissioner,
North Delhi Municipal Corporation
9th Floor, Civic Centre, Minto Road,
New Delhi 110 002

...Management

AWARD

Central Government, vide letter No.L-42011/154/2014-IR(DU) dated 04.02.2015, referred the following industrial dispute to this Tribunal for adjudication:

“Whether the workman Shri Dharmendra Mahto entitled to re-absorption in service with MCD as domestic Breeding Checker? If yes with effect from which date and if no, to what relief the workman is entitled to?”

2. Corrigendum dated 04.02.2015/13.03.2015 was received from the appropriate Government substituting the name of the employer as ‘The Commissioner, North Delhi Municipal Corporation, 9th Floor, Civic Centre, Minto Road, New Delhi’ instead of ‘The Commissioner, Municipal Corporation of Delhi(East), Udyog Sadan, near Patparganj, Jawaharlal Nehru Marg, New Delhi – 110 002’.

3. Claim statement was filed by Shri Dharmendra Mahto, averring that he joined the employment of the management on 11.09.2007 as Domestic Breeding Checker in Malaria Department, initially for a period of three months. Vide order dated 06.06.2008, the claimant was given further extension of six months, thereafter from 01.12.2008 he was not taken on the job despite his repeated visits to the management. Thus, termination of the claimant herein is totally illegal, bad, unjust and malafide as the work being performed by him is perennial in nature and violative of Section 25-F, G and H of the Act. Further the workmen who joined the management alongwith the claimant are still working with the management. Finally, it has been prayed that he be reinstated in service with full back wages and consequential benefits.

4. Claim was resisted by the management taking preliminary objections of non-espousal by a union, non service of demand notice, claimant not being a workman under section 2(s) of the Act and reference being made without application of mind. On merits, the management has admitted that the claimant was engaged as Domestic Breeding Checker on 11.09.2007 and worked upto 30.11.2007 but on contract basis for seasonal work. The claimant was re-engaged on 06.06.2008 and worked till 30.11.2008. The claimant applied for re-engagement and his name was considered for the post of DBC vide Office Order No.AMO/CLZ/2009/1166 dated 04.05.2009 but the claimant did not present himself before the management till 02.06.2009. Management has denied the other material averments contained in the statement of claim. Finally, it has been prayed that the claim may be dismissed.

5. Rejoinder was filed on behalf of the claimant, which is on the same lines as those contained in the statement of claim.

6. On perusal of pleadings of the parties, following issues were framed:

- (i) Whether claim petition is not maintainable in view of various preliminary objections?
- (ii) As in terms of reference
- (iii) Relief

7. Thereafter, the case was listed for evidence of the claimant. However, it was stated at the bar by the learned A/R for the claimant that the claimant has since expired and despite his best efforts, he could not contact the legal heirs of deceased claimant nor have they approached the Union for pursuing the case. Thus, it is apparent that the legal heirs of the deceased claimant are not interested in adjudication of the case on merits.

8. Since the workman has expired and his legal heirs have not approached their union for adjudication of the case on merits, as such, this Tribunal is left with no choice, except to pass a ‘No Dispute/Claim’ award. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : March 17, 2017

A. C. DOGRA, Presiding Officer

नई दिल्ली, 26 अप्रैल, 2017

का.आ. 1156.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार आयुक्त, नगर निगम दिल्ली (उत्तर), नई दिल्ली एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में

निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं. 1, दिल्ली के पंचाट (संदर्भ संख्या 57/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20.04.2017 को प्राप्त हुआ था।

[सं. एल-42011/140/2014-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 26th April, 2017

S.O. 1156.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (ID Case No. 57/2015) of the Central Government Industrial Tribunal-cum-Labour Court No.1, Delhi as shown in Annexure, in the industrial dispute between the employers in relation to the Commissioner, Municipal Corporation of Delhi (North), and their workman, which was received by the Central Government on 20.04.2017.

[No. L-42011/140/2014-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

IN THE COURT OF SHRI AVTAR CHAND DOGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO.1, KARKARDOOMA COURT COMPLEX, DELHI

ID No. 57/2015

Shri Khem Chand through
Delhi Udhiyan Sangharsh Union,
B-5, Ram Gali, North Ghonda,
New Delhi - 110 053

...Workman

Versus

The Commissioner,
Municipal Corporation of Delhi(North),
9th Floor, Civic Centre, Minto Road,
New Delhi 110 002

...Management

Reference under clause (d) of sub-section(1) and sub-section 2A of Section 10 of the Industrial Disputes Act, 1947(in short the Act) was received from the Central Government, Ministry of Labour and Employment vide it orders No.L-42011/140/2014-IR(DU) dated 19.01.2015 for adjudication of an industrial dispute with the following terms:

Whether Shri Khem Chand is entitled salary in the proper grade pay scale of Rs.950-1500 from 29.09.1989 Rs.3050-4590 from 01.01.1996 and Rs.5200-20200 as revised from time to time alongwith all consequential benefit as are privileged? If so, what directions are necessary in this respect?

2 Claim statement was filed by Shri Khem Chand, claimant herein, averring therein that he was in the employment of Municipal Corporation of Delhi, the management, in Horticulture Department since 1962 as chowkidar. The claimant had unblemished and uninterrupted record to his credit. The claimant at the time of his retirement on 31.08.2009 on the post of Garden Chaudhary, and he was working as such since 18.08.1993. The claimant appeared in the Trade Test in 1988 and obtained 88 marks out of 100. 18 claimants who had obtained 90 marks and 6 others were promoted on the post of Garden Chaudhary in 1992 and their services were granted with effect from 29.09.1989 but the claimant was not considered due to malafide intentions. Shri Ramhit, who was junior to the claimant in seniority, was promoted to the post of Garden Chaudhary from 27.07.2009. Hence, action of the management is wholly, illegal, bad, unjust and discriminated against as the workman was a regular employee having passed the trade test and juniors to him were promoted as Garden Chaudhary. Finally, it is prayed that the claimant may be granted benefits of Garden Chaudhary with effect from 29.09.1989, the date his juniors were promoted.

3. Written Statement was filed by the management, wherein material averments as contained in the statement of claim has been denied and the claimant be put to strict proof of the averments made in his statement of claim.

4. Rejoinder was filed on behalf of the claimant, which is on the same lines as the statement of claim filed by them.

5. On perusal of pleadings of the parties, this Tribunal vide order dated 02.12.2016, observed that no specific issue arises, except the reference already made by the Central Government for adjudication. Thereafter, matter was listed for evidence of the claimant. However, neither the claimant nor any authorized representative appeared on his behalf thereafter. Since the workman has not led any evidence so as to prove his cause against the management, as such, this

Tribunal is left with no choice, except to pass a 'No Dispute/Claim' award. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : March 15, 2017

A. C. DOGRA, Presiding Officer

नई दिल्ली, 26 अप्रैल, 2017

का.आ. 1157.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ठेकेदार, मैसर्स सतर्क सुरक्षा, नई दिल्ली एवं उनके कर्मचारी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं. 1, दिल्ली के पंचाट (संदर्भ संख्या 83/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 09.03.2017 को प्राप्त हुआ था।

[सं. एल-42012/01/2015-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 26th April, 2017

S.O. 1157.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (ID Case No. 83/2015) of the Central Government Industrial Tribunal-cum-Labour Court No.1, Delhi as shown in Annexure, in the industrial dispute between the employers in relation to the Contractor, M/s. Vigilant Security, New Delhi, and their workman, which was received by the Central Government on 09.03.2017.

[No. L-42012/01/2015-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

IN THE COURT OF SHRI AVTAR CHAND DOGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO.1, KARKARDOOMA COURT COMPLEX, DELHI

ID No. 83/2015

Shri Shrikant Mishra,
A-228, Moti Bagh-I,
New Delhi 110 021

...Workman

Versus

The Contractor,
M/s Vigilant Security,
Old Double Storey, in front of Shani Mandir,
P-23, Lajpat Nagar,
New Delhi 110 024

...Management

AWARD

A reference was received for adjudication of an industrial dispute from Central Government under Clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (in short the Act), this Tribunal, vide letter No.L-42012/01/2015-IR(DU) dated 17.02.2015, terms of which are as under:

“Whether the action of the management of M/s Vigilant Security in terminating the services of Shri Shrikant Mishra, Ex-Security Guard with effect from 29.06.2013 is justified or not? If not, what relief will be given to the workman and from which date?”

2. Claim statement was filed by the Shri Shrikant Mishra, the claimant herein, wherein it is averred that he was appointed as Security Guard on 24.06.2010 by Ministry of Home Affairs, Management No.1 and his last drawn monthly wages was Rs.9500.00. At the time of his appointment, Management No.1 assured that bonus, TA, DA, leave encashment, provident fund, gratuity, overtime etc. would also be given to him. The claimant performed his duties honestly, diligently and to the entire satisfaction of his superiors. In fact, he was appreciated by senior executives of Management No.1, under whom he had worked. Extra hours of work was also taken from the claimant. When the claimant demanded the facilities mentioned above, the management terminated his services on 29.06.2013. A complaint was lodged before the Labour Commissioner and the dispute was amicably resolved and the claimant was reinstated on 21.08.2013. Again on 24.02.2014, services of the claimant was dispensed with as he had crossed 45 years

of age, though the age of retirement is 60 years as per Government rules. Thus, it is averred by the claimant that his termination is illegal, unlawful and arbitrary, as statutory provisions under Section 25-N of the Act have not been complied with, inasmuch as no three months notice or pay in lieu thereof, retrenchment compensation etc. was paid to him. The claimant is unemployed since the date of his termination. Finally, it is prayed that the claimant may be reinstated with full back wages and other service benefits.

3. Despite service of notice, none appeared on behalf of the managements, and hence managements were proceeded ex-parte on 03.11.2015. However, an application was filed by Management No. 2, M/s. Vigilant Security for recalling of the ex-parte order, which was allowed and management No. 2 filed its written statement taking various preliminary objections, i.e. his services being terminated by management No.1, concealment of age by the claimant, non service of demand notice etc. On merits, management has denied the material averments contained in the statement of claim. Finally, a prayer has been made that the claim may be rejected without any further consideration.

4. Rejoinder filed by the claimant was also on the same lines as the averments contained in the statement of claim.

5. On perusal of pleadings of the parties, following issues were settled and the case was listed for evidence of the claimant:

- (i) Whether the claim is not legally maintainable in view of the various preliminary objections?
- (ii) In terms of reference

6. However, none appeared on behalf of the claimant on 03.11.2016, 13.01.2017 and 21.02.2017. Thus, it is clear that the workman is not interested in adjudication of the reference on merits.

7. Since the workman has not led any evidence so as to prove his cause against the management, as such, this Tribunal is left with no choice, except to pass a 'No Dispute/Claim' award. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : March 3, 2017

A. C. DOGRA, Presiding Officer

नई दिल्ली, 26 अप्रैल, 2017

का.आ. 1158.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स गोयल कंस्ट्रक्शन एंड इंजीनियर्स, जेवीटीएस गार्डन, नई दिल्ली व अन्य एवं उनके कर्मचारी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं. 1, दिल्ली के पंचाट (संदर्भ संख्या 14/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.11.2016 को प्राप्त हुआ था।

[सं. एल-42012/171/2014-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 26th April, 2017

S.O. 1158.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (ID Case No. 14/2015) of the Central Government Industrial Tribunal-cum-Labour Court No.1, Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to the M/s. Goel Constructions & Engineers, JVTs Garden, New Delhi & others and their workman, which was received by the Central Government on 30.11.2016.

[No. L-42012/171/2014-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

IN THE COURT OF SHRI AVTAR CHAND DOGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO.1, KARKARDOOMA COURT COMPLEX, DELHI

ID No. 14/2015

Shri Raj Kumar,
Through Indian Steel and Metal Workers Union,
1800/9, Govindpuri Extension,
Main Road, Kalkaji,
New Delhi 110 019

...Workman

Versus

1. M/s. Goel Construction & Engineers,
C – 503, JVTs Garden,
Chhattarpur Extension,
New Delhi 110 074
2. Health and Family Welfare Centre,
Baba Ganga Nath Marg,
Munirka, New Delhi

...Managements

AWARD

Central Government, vide letter No.L-42012/171/2014-IR(DU) dated 08.01.2015, referred the following industrial dispute to this Tribunal for adjudication:

“Whether the termination of the workman Shri Raj Kumar S/o Shri Sohan Lal by the management of M/s. Goel Construction & Engineers a sub contractor of NPCC in the establishment of National Health and Family Welfare Centre, Principal Employer w.e.f. 12.06.2013 is just, fair and legal? If not, what relief the workman concerned is entitled to?”

2. Claim Statement was filed wherein it is averred that Shri Raj Kumar, the claimant herein, was engaged by National Health and Family Welfare Centre (hereinafter referred to as the management) through M/s. Goel Construction and Engineers (in short the contractors) as helper and his last drawn wages was Rs.8,814.00. The contractors were fake and was interposed by the management so as to deprive the workers benefits under the labour legislation, viz. minimum wages, ESI, PF, leaves, bonus, identity card etc. More than 25 workers were engaged by the management. Claimant had a clean record and there was no kind of complaint against him.

3. At the time of his engagement, the claimant herein was made to sign on blank papers, vouchers and appointment letter, copies of which was not provided to him. Since the claimant herein demanded facilities of PF, ESI etc., the management was annoyed and his services were done away with on 12.06.2013. The claimant has not been paid wages for the period from 01.05.2013 to 11.06.2013. The claimed had put in 240 days of continuous service in each year preceding his termination. No one months' notice or pay in lieu thereof was paid to the claimant before his termination. Juniors to him are still employed with the Contractor and fresh appointments have also been made. Demand notice was served on the management on 13.06.2013, but the management neither replied to the same nor was taken back on duty. Subsequently, he raised a dispute before the Conciliation Officer, claiming that his services were terminated in an illegal manner. Since conciliation proceedings failed, the appropriate Government referred the dispute to this Tribunal for adjudication. He claims reinstatement in service with continuity and full back wages.

4. Claim was contested by the Health and Family Welfare Centre (Management No.2) averring that there is no industrial dispute between the workman and Management No.2, who had in fact awarded contract for civil and electrical maintenance to NPCC Ltd., a Government of India Enterprises, who in turn awarded the contract to M/s Goel Construction and Engineers (Management No.1) for execution of civil maintenance work. Terms and conditions regarding payment of wages, EPF, ESIC, bonus, leave etc. to the employees engaged by management No.1 was made by NPCC Ltd. The workman was never on the pay rolls of Management No.2. Hence management No.2 has no direct control over them. Various other preliminary objections, including lack of jurisdiction of this Tribunal to adjudicate the case, claim being barred by limitation etc. Finally, it has been prayed that the claim may be dismissed.

5. Management No.1, despite affording various opportunities, failed to file its statement of defence and hence was proceeded ex-parte on 12.10.2015.

6. On the basis of pleadings of the parties, this Tribunal vide order dated 08.04.2016 framed the following issues:

- (i) Whether the reference herein is not legally maintainable in view of the various preliminary objections raised by the management?
- (ii) As in terms of reference

7. Thereafter, case was listed for evidence of the claimant. In spite of affording three opportunities, evidence of the claimant was not present. Thus, it is clear that the workman is not interested in adjudication of the case on merits.

8. Since the workman has neither put in his appearance nor has he led any evidence so as to prove his cause against the management, as such, this Tribunal is left with no choice, except to pass a 'No Dispute/Claim' award. An award is accordingly passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : November 25, 2016

A. C. DOGRA, Presiding Officer

नई दिल्ली, 26 अप्रैल, 2017

का.आ. 1159.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सचिव, एनडीएमसी, पालिका केंद्र, नई दिल्ली एवं उनके कर्मचारी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं. 1, दिल्ली के पंचाट (संदर्भ संख्या 321/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22.03.2017 को प्राप्त हुआ था।

[सं. एल-42012/11/2011-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 26th April, 2017

S.O. 1159.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (ID Case No. 321/2011) of the Central Government Industrial Tribunal-cum-Labour Court No.1, Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to the Secretary, N.D.M.C., Palika Kendra, New Delhi, and their workman, which was received by the Central Government on 22.03.2017.

[No. L-42012/11/2011-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE PRESIDING OFFICER : CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO. 1 : ROOM NO. 38-A (GF) KARKARDOOMA COURT COMPLEX, SHAHDRA, DELHI- 32

ID No. 321/2011

Shri Narender S/o Shri Baljeet Singh,
C/o Municipal Employees Union
Agarwal Bhawan, G.T. Road,
Tis Hazari, Delhi,
Delhi – 110054

...Workman

Vs.

The Secretary,
N.D.M.C., Palika Kendra,
New Delhi – 110001

...Management

AWARD

Pursuant to the receipt of order dated 16.09.2011 from Government of India Ministry of Labour under clause d of Sub Section (I) and Sub Section 2-A of Section 10 of Industrial Dispute Act (in Short the Act), this Tribunal is required to adjudicate an Industrial dispute/reference the terms of which is as under:-

“Whether the action of the management of New Delhi Municipal Council, New Delhi in terminating the services of Shri Narender, Ex-Mali w.e.f. 03/12/2008, is legal and justified? What relief the workman is entitled to?”

2. Briefly, it is evident from the statement of claim that workman herein, was in the employment of the management w.e.f. 20.07.1986 as a Mali. He was being treated as a daily rated/casual/muster roll worker and was being paid fix wages which was revised from time to time under the Minimum Wages Act. They were also enjoying other facilities like Uniform, EL, CL, and Gazetted / Festival / Restricted Holidays etc. He has unblemished and uninterrupted record of services to his credit.

3. The service of the workman has been terminated on 20.10.1988 without any valid reason. The workman herein earlier raised an Industrial dispute which was referred for adjudication by the appropriate government to the industrial tribunal and Presiding Officer, labour court No.4 held the order of termination to be illegal and unjustified. The workman was also held entitled to reinstatement in service with full back wages. The said award was published as required under the law vide Labour Commissioner Certificate date 22.01.2004. The management challenged the aforesaid award before the Hon'ble Delhi High Court by filing writ petition bearing no. 11462/2004 and Ld. Single Judge vide order dated 20.12.2006 set aside the award of the Labour Court. The workman feared and filed LPA against the judgment of the single judge of the Hon'ble High Court and Division Bench of the High Court and ordered the

management to consider the case of the workman concerned for his regular employment as and when there is some vacancy or some recruitment is done.

4. In View of the above order of Hon'ble High Court of Delhi, the management allowed the workman to join duties on 06.09.2008 and workman worked with the said section to the entire satisfaction of his superiors. Thereafter, the service of the workman herein was again terminated on 03.12.2008 by way of refusal of duties. The workman has alleged the termination and non-regularization of services as Mali is wholly illegal, bad, unjust and malafide which also amounts to unfair labour practice.

5. The reference was contested by the management who filed written statement there too and took preliminary objections inter-alia of maintainability etc. It has been alleged on merits that engagement of workman herein is purely temporary and workman had worked as casual labour from 06.10.2008 to 05.11.2008 and from 06.11.2008 to 03.12.2008 against casual labour seat. The management denied averments of the statement of claim and also admitted the filing of earlier case by the workman and its decision by the Hon'ble High Court of Delhi. It is also alleged the workman is not in service of the management after his termination in year 1988, therefore, there is no question of treating him regular employee. The Hon'ble High Court of Delhi has only directed to consider his case as and when vacancies arises.

6. The workman filed rejoinder to the written statement filed by the management and reasserted the stand taken in statement of claim.

7. Again his factual background, this tribunal vide order dated 07.12.2012 frame the following issues:

- (i) Whether claim filed by Shri Narendra is stale, since his services were allegedly terminated in the year 1988 ? If yes it effects.
- (ii) As in terms of reference.
- (iii) Relief.

8. Workman in support of his case examined himself as WW1 and tendered in evidence documents Ex. WW1/1 to Ex. WW1/91. Management, in order to rebut the case of the claimant examined Shri Kunwar Pal Singh, Deputy Director (Horticulture) as MW1, who tendered in evidence documents Ex.MW1/1 and Ex.MW1/2.

9. I have heard Shri Abhinav Kumar, S/R for the claimant and Shri M.S. Rawat, A/R for the management

Findings on Issue No. 1:

During the course of arguments, it was fairly conceded by the Ld. A/R for the parties that pleadings of the parties clearly show that service of the workman herein was earlier terminated on 20.10.1988 and thereafter, an industrial dispute was raised vide ID No.121/1990 by the workman herein same was decided in favour of the workman on 24.05.2003 by D.K Malhotra, Presiding Officer, Labour Court No.4 held the termination of the workman herein to be illegal and ordered his reinstatement with full back wages. It is also clear that thereafter, management has filed an appeal before the Hon'ble High Court vide writ petition No.11462/2004 and the same is decided on 20.12.2006 thereby the award of the industrial tribunal was set aside. It was thereafter, a LPA was filed against the single judge before the Hon'ble High Court of Delhi and decided vide judgement dated 13.03.2007. It was ordered by the High Court to consider the case of workman for regular employment as and when vacancies fall vacant. As a sequel to the above judgment of the Hon'ble High Court, the workman was taken back in service by the management on 06.09.2008. The workman was working to the satisfaction of the management but suddenly on 03.12.2008 the service of the workman was again terminated.

10. It was urged on behalf of the management that the claim in the present case is virtually stale and no relief can be granted to the workman as his guilty of delay and latches.

11. Admittedly, in the present case workman had already one round of litigation and the judgment of the High Court in LPA No. 188/2007 decided on 13.03.2007 Ex WW1/9 is very clear. The main contention of the workman before the High Court was of hostile discrimination by the management as juniors to him have been retained in service while he has been thrown out of the job without following of due procedures. The Hon'ble High Court after discussing the comparative merits of the arguments, in Para 11 had held as under :

“11. It is, however, clear from the records that the appellant has worked with the respondent on different dates for a considerable period of time and after the award was passed the appellant worked with the respondent for about six months. In that view of the matter, while upholding the order passed by the learned Single Judge, we issue a direction to the respondent to consider the case of the appellant for regular employment as and when there is an advertisement and recruitment is done, after taking notice of the past services of the appellant with the respondent. As and when there is temporary vacancy, the case of the appellant should be considered for such engagement.

12. We also make it clear that whatever payment has been made to the appellant by the respondent under Section 17B of the Act, the same shall not be realized by the respondent as that amount stands already paid to the appellant.

13. The appeal stands disposed of in terms of the aforesaid order.”

12. It is evident from the perusal of the above Para that management was directed to consider the case of workman herein, for regular employment as and when there is an advertisement and recruitment is done after taking into consideration past service of the workman. Even the case of the workman was required to be considered for temporary vacancy also. Therefore, there is no merit in the contention of the management that the present matter is stale or workman herein is the guilty of any delay and laches, particularly when time was consumed because of filing of writ petition by management and writ court appeal (L.P.A) by the workman.

13. The Hon'ble Apex Court on in the case of Sapan Kumar Pandit Vs. UP State Electricity Board Air 2001 SC 2562 almost under the similar circumstances considered the question of delay and laches in a case where the service of the workman was terminated illegally and there was delay of more than 15 year in approaching the tribunal. The Industrial tribunal has held the termination to be illegal and management filed writ petition against the same thereby order of the industrial tribunal was set aside and thereafter, the matter was taken by the workman to Apex Court wherein the judgment of the High Court was set aside and that of industrial adjudication up held.

14. In Para 15 of the Judgments, Hon'ble Apex court held as under:

“15. There are cases in which lapse of time had caused fading or even eclipse of the dispute. If nobody had kept the dispute alive during the long interval it is reasonably possible to conclude in a particular case that the dispute ceased to exist after some time. But when the dispute remained alive though not galvanized by the workmen or the union on account of other justified reasons it does not cause the dispute to wane into total eclipse. In this case when the Government has chosen to refer the dispute for adjudication under Section 4K of the U.P. Act the High Court should not have quashed the reference merely on the ground of delay. Of course, the long delay for making the adjudication could be considered by the adjudicating authorities while moulding its reliefs. That is a different matter altogether. The High Court has obviously gone wrong in axing down the order of reference made by the Government for adjudication. Let the adjudicatory process reach its legal culmination.

16. For the aforesaid reasons we allow this appeal and set aside the impugned judgment.”

15. In Haryana State Co-op Land Development Bank vs. Neelam (2005) 5 SCC 91, the question of limitation for making a reference u/s 10 of the Act as well as plea of delay and laches was considered in an elaborate manner. After letting into consideration the ratio of various authorities on the subject, it was held that law does not prescribe any limitation or time limit for the appropriate Govt. to exercise its power u/s 10 of the Act. It is not that power can be exercised at any time or stale matter or matters which have become final can be reviewed. The plea of estoppel, waiver or acquiescence can always be raised by management and a workman in certain situations may be held to be bound by the same. Since facts of no two cases are similar as such each case has to be decided in the background of its picador fucluiid scenario. Whether the relief to the workman should be appropriately moulded ordered on the ground of delay and lechers is at the discretion of the court depending upon facts and circumstances of each case.

16. Thus, the legal position which emerges from the perusal of the various rulings is that one's a reference is made under section 10 of the Act by the appropriate government to this tribunal. The same is required to be answered on merits. The plea of delay and laches or matter being still cannot create a legal impediment for the tribunal to render decision in as much as the provision of limitation Act is not applicable to proceeding under the ID Act. So long as industrial dispute exists or is apprehended between the parties, the tribunal has to render finding on merits and has no jurisdiction to travel beyond the terms and reference. The impact of prolonged delay would be considered qua the relief of reinstatement as well as payment of back wages etc. having due regard to the facts and circumstances of the case. This issue is decided accordingly.

Issue No. 2

17. Now, the main question before this tribunal is, whether the action of the management in terminating the services of workman Sh. Narender, Ex. Mali w.e.f. 03.12.2008 is legal and justified. In this regard it is appropriate to refer to the statement of claim as well as affidavit filed by workman which is Ex. WW1/A. It is the case of the workman that he was initially employed as a Mali on 20.07.1986 and was treated as Daily rated/casual/muster roll worker. The management in the written statement has admitted in Para 4 that the service of the workman was terminating in the year 1988 and matter was also taken to the Hon'ble High Court by the workman by filing a Writ Petition. The management has further admitted that as and when vacancy arises, the case of the workman shall be considered by the management

for his employment. It is also the stands of the management that counterparts of the workman were not treated as a regular but only as muster roll/ Daily wager employees. It is also clear from the perusal of the record of the service of the workman herein was terminated on 20.10.1988 without assigning any reason and workman has challenged the action of the management by raising an industrial dispute in Labour Court No.IV in the Court of Sh. D.K. Malhotra wherein the termination of the workman is held to be illegal by the Labour Court. It was thereafter, the management took the matter in appeal by filing writ petition and single judge of the Hon'ble High Court of Delhi vide judgment dated 20.12.2006 set aside the impugned award. The workman herein, again filed LPA before the Hon'ble High Court against the judgment of single judge and the case was decided on 13.03.2007. As discussed above the management was directed to consider the case of workman herein as and when vacancy arises. It was thereafter, as a sequel to the aforesaid judgment of the Hon'ble High Court, the workman was given employment on 06.09.2008. There is nothing on the record to suggest that after his re-engagement on 06.09.2008 the workman was issued any memo or show cause notice. Rather the evidence of the workman while appearing as Ex. WW1 is clear that he was working to the satisfaction of the management.

18. Management had examined Sh. Kamar pal singh Deputy Director of Horticulture as Ex. MW1 and whose affidavit is Ex. MW1/A. He had also tendered in his evidence documents Ex. MW1/1 and EX. MW1/2. He has further deposed that there were 600-800 Beldar who were employed by the management. He has also produced the Photo copy of the muster rolls in aspect of the aforesaid Beldars and there is no dispute that workman was also engaged as daily wager worker along with these Beldar, this witness is also produced the muster roll on the direction of the court which is Ex.MW1/W2. He has further made a vital admission in his cross examination dated 12.02.2015 that some post of Beldar and Malies are vacant at present. He further admitted that Beldar and Malies were deployed in the year 2007 who were working on regular muster roll and their services were regularized in the year 2014. He further went to state that there is no documents on the record to show that the services of the workman were terminated after 2008. If it is the factual position then there was no occasion or legal justification to remove or terminate the service of the workman herein who was performing the duties continuously. It is not the case of the management that the work was not available as such service of the workman was terminated. Rather the evidence on the record is crystal clear that about 700 workers doing similar work were regularized as regular Muster roll worker. Strangely enough the case of the workman was not considered, as deposed by Sh. Kamar Pal Singh Ex.MW1. In view of the Division Bench of the High Court Ex.WW1/9 the thrust of the entire judgment as discussed above was to give re-employment to the workman herein as and when vacancy fell vacant. But the management has acted in most capricious and arbitrary manner by following the policy of "Hire and Fire". The work being performed by the workman herein, is perennial in nature and the same is not seasonal in nature. The perusal of the various muster rolls Ex. WW1/1 to WW1/88 also shows that workman herein was continuously in the employment of the management. Moreover, it is not the case of the management that he has not completed 240 days in a calendar year. The workman has also obtained information under RTI Act regarding the vacancy of d category of post of Mali/Beldar/Peon/Safai Karamchhari and it is clear from the year wise information that every year posts were vacant ranging from 135 in the year 2007 and 296 in the year 2013. This also clearly shows that posts were vacant every year and there was no legal justification to terminate the service of the workman herein without any rhyme or reason. Section 25 F of ID Act clearly provide that no workman whose employed in an industry shall be retrenched by the employer until one month notice has been given in writing to such of workman or workman has been paid in lieu of such notice salary for the period of one month. The requirement of Section 25 F of the Act is mandatory in nature and violation of the provision of the Section 25 F would render the action of the management to be illegal and void under the law. This would necessary result in reinstatement of the workman if the vacancy is still existing with the management. Since the re-employment of the workman herein was as per the direction given by the Hon'ble High Court in the LPA discussed above as such it was expected of the management to be more vigilant and careful before ordering termination of the service of the workman. The net result of the discussion is that the action of the management of New Delhi Municipal council, Management herein, in terminating the service of workman Sh. Narender w.e.f. dated 03.12.2008 is held to be neither legal nor legally justified. This issue is decided in favour of workman accordingly.

Relief:

19. As a sequel to my finding given above it is held that the action of the management New Delhi Municipal Council in terminating the service of Sh. Narender (Mali) is patently illegal as such not justify under the law. Further, the workman herein is held entitled to be reinstated with full back wages including all consequential benefits. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : March 16, 2017

A.C. DOGRA, Presiding Officer

नई दिल्ली, 27 अप्रैल, 2017

का.आ. 1160.—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 1 की उप-धारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्द्वारा 1 मई, 2017 को उस तारीख के रूप में नियत करती है, जिसे उक्त अधिनियम के अध्याय IV (धारा 44 व 45 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है) तथा अध्याय V और VI [धारा 76 की उप-धारा (1) और धारा 77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी हैं] के उपबंध पश्चिम बंगाल राज्य के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात् :—

“मालदा जिला (पश्चिम बंगाल) के सभी क्षेत्र/संपूर्ण क्षेत्र” ।

[सं. एस-38013/01/2017-एस.एस.-I]

अजय मलिक, अवर सचिव

New Delhi, the 27th April, 2017

S.O. 1160.—In exercise of the powers conferred by sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby appoints the 1st May, 2017 as the date on which the provisions of Chapter-IV (except Sections 44 and 45 which have already been brought into force) and Chapter-V and VI [except sub-section (1) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force] of the said Act shall come into force in the following Areas in the State of West Bengal namely :—

“All the areas of the District Malda, West Bengal.”

[No. S-38013/01/2017-S.S.-I]

AJAY MALIK, Under Secy.

नई दिल्ली, 27 अप्रैल, 2017

का.आ. 1161.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ईसीएल के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 67/1996) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27.04.2017 को प्राप्त हुआ था।

[सं. एल-20012/199/1995-आईआर (सीएम-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 27th April, 2017

S.O. 1161.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (Ref. No. 67 of 1996) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. ECL and their workmen, which was received by the Central Government on 27.04.2017.

[No. L-20012/199/1995-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD**

In the matter of reference U/S 10(1) (d) (2A) of I.D. Act, 1947

Reference No. 67 of 1996

Employer in relation to the management of Chapapur Colliery of M/s. ECL

AND

Their workman

Present : Shri R.K. Saran, Presiding Officer**Appearances:**

For the Employers : None

For the workman : None

State : Jharkhand

Industry : Coal

Dated- 27/03/ 2017

AWARD

By order No. L-20012/199/1995-IR(C-I) dated 03/07/1996, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub –section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

“Whether the demand by the Union that Sh. Hridyanand Mahto and 24 others (List enclosed) are required to be posted in their original jobs as truck- loaders by the management of chapapur colliery of Nirsha Area of M/s. ECL is justified and legal? If so, to what relief are these workmen entitled?”

LIST OF THE WORKMEN

1. S/Sh. Parash Nath manjhi
2. Yamuna Mahto
3. Id. Mohammad Ansari
4. Dina Nath Mahto
5. Amrika Mahto
6. Ramnath Mahto
7. Girdhar Mahto
8. Mohit Mahto
9. Lal Bihari Mahto
10. Prabhu Nath Mahto
11. Narayan Bauri
12. Lakhi Singh
13. Chhotu Rawani
14. Churu Singh
15. Budhan Bauri
16. Gautam Mahto
17. Dhim lal Mahto
18. Sukhal Mahto
19. Rameshwar Manjhi
20. Narayan Matho
21. Mahadeo Gorai
22. Gopal Rai
23. Shiv Punjan Mahto
24. Gayatri Sah

2. After receipt of the reference, both parties are noticed. But appearing for certain dates none appears subsequently. Case remains pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed. Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 27 अप्रैल, 2017

का.आ. 1162.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीसीसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक

अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 06/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27.04.2017 को प्राप्त हुआ था।

[सं. एल-20012/197/2002-आईआर (सीएम-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 27th April, 2017

S.O. 1162.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (Ref. No. 06 of 2003) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 27.04.2017.

[No. L-20012/197/2002-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD

In the matter of reference U/S 10(1) (d) (2A) of I.D. Act, 1947

Reference No. 06/2003

Employer in relation to the management of Sijua Area of M/s. BCCL

AND

Their workman

Present : Shri R.K. Saran, Presiding Officer

Appearances:

For the Employers : Shri D.K. Verma, Advocate

For the workman : None

State : Jharkhand

Industry : Coal

Dated- 24/03/ 2017

AWARD

By order No. L-20012/197/2002-IR(C-I) dated 10/12/2002, the central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub -section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

“Whether the demand of the RCMS to provide employment to the son of Smt Geni Bourin under special VRS (f) scheme of the establishment is proper and justified ? If so to what benefit the concerned workman / her dependent is entitled? ?”

2. After receipt of the reference, both parties are noticed. But none appears on behalf of the workman. Case remains pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed. Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 27 अप्रैल, 2017

का.आ. 1163.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीसीसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 23/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27.04.2017 को प्राप्त हुआ था।

[सं. एल-20012/33/2015-आईआर (सीएम-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 27th April, 2017

S.O. 1163.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (Ref. No. 23 of 2015) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 27.04.2017.

[No. L-20012/33/2015-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD

In the matter of reference U/S 10(1) (d) (2A) of I.D. Act, 1947

Reference No. 23/2015

Employer in relation to the management of Katras Area of M/s. BCCL

AND

Their workman

Present : Shri R.K. Saran, Presiding Officer

Appearances:

For the Employers : Shri D.K. Verma, Advocate

For the workman : Shri B.B. Pandey, Advocate

State : Jharkhand

Industry : Coal

Dated- 27/03/2017

AWARD

By order No.-L-20012/33/2015- IR-(CM-I), dated. 09/06/2015 the Central Govt. in the Ministry of Labour has, in exercise of powers conferred by clause (d) of Sub –Section (1) and Sub-Section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

“Whether the action of the management of Katras chaitudih colliery under Katras Area of M/S BCCL in dismissing Sri Bambam Nonia from the services vide letter dated 18/21.01.2002 is fair and justified? To what relief the concerned workman is entitled to?”

2. The case is received from the Ministry of Labour on 15.06.2015 After receipt of reference , both parties are noticed. The workman files their written statement on 31.07.2015. And the management files their written statement - cum-rejoinder on 15.10.2015. Document of Workman is marked as W-1& W-2.
3. The short point involved in this reference is that the workman has been dismissed from his services on absenteeism.
4. During Preliminary hearing. it is revealed that the case is dismissal of workman on the ground of long absence on duty. But he has already out of service for 15 years. It is felt to give another chance to the workman to serve.
5. Considering the facts and circumstances of this case, I hold that he be taken into job as a fresh employee as cat-I scale. But the workman be kept under probation for a period two year . Therefore the question of giving back wages does not arise at all.

This is my Award.

R. K. SARAN, Presiding Officer

नई दिल्ली, 27 अप्रैल, 2017

का.आ. 1164.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीसीसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 39/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27.04.2017 को प्राप्त हुआ था।

[सं. एल-20012/58/2008-आईआर (सीएम-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 27th April, 2017

S.O. 1164.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (Ref. No. 39 of 2008) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 27.04.2017.

[No. L-20012/58/2008-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD**

In the matter of reference U/S 10(1) (d) (2A) of I.D. Act, 1947

Reference No. 39/2008

Employer in relation to the management of Block II Area of M/s. BCCL

AND

Their workman

Present : Shri Ranjan Kumar Saran, Presiding Officer**Appearances:**

For the Employers : Shri D.K. Verma, Advocate

For the workman : Shri R.S. Dubey, Rep.

State : Jharkhand

Industry : Coal

Dated- 23/03/2017

AWARD

By Order No.L-20012/58/2008-IR (C-1), dated 19/08/2008, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

“Whether the action of the management of BOCP mines, Block II Area of M/S BCCL in denying promotion in category IV in 1980, Category V in 1982, category VI in 1985, T&S grade-C in 1990, T&S Grade –B from the year 1998 and in Grade –A from the year 2004 to Shri Ganesh Mahatha, Electrician is justified and legal? (ii) To what relief is the concerned workman entitled and from which date?”

2. The case is received from the Ministry of Labour on 26.08.2008. After receipt of the reference, both parties are noticed. The Sponsoring union files their written statement on 17.04.2009. Thereafter the management also files their written statement-cum - rejoinder on 17.07.2009. Rejoinder & Document filed by the union which is marked as W-1 to W-13. One witness each side have been examined.

3. The case of the Sponsoring Union is that Sri Ganesh Mahatha, concerned workman was appointed on 02.02.1967 as an Electrical Apprentice by the erstwhile owner of M/S Kessaragarh Colliery and he was working as Electrical installation upto 550 Volts. The mine was nationalised on 01.05.1972, the concerned workman became a BCCL employee.

4. It is further submitted by the union that he was given difference of wages of Cat.IV/II for working regularly as an Electrician and he was placed in Cat.IV in the year 1983, Cat-V in the year 1990 and Cat-VI in the year 1995, whereas one of his junior namely Panchanan Mahato was placed in Cat-IV in year 1980, Cat-V in the year 1982, in the year 1985 Cat-VI and further junior Sri Mahato was placed in T& S Grade-C in the year 1990 and Grad-B in 1998 and Grade-A in the year 2004, superseding in promotion to the concerned workman.
5. The concerned workman due to supersession in promotion by one of his junior Panchanan Mahato is also legally entitled for promotion in Cat-IV, to VI and Grade-C to A from the dates of his junior was promoted, causing supersession w.e.f 1980, 1982, 1985, 1990, 1998 and 2004 respectively from Cat-IV to VI and Grade C to A. As per the cadre scheme of JBCCI is crystal clear about seniority/ promotion without any valid reason.
6. On the other hand the case of the management is that Sponsoring union raised a stale dispute and demanded promotion of the workman concerned w.e.f. 1980 after the laps of more than 25 years. The sp. union has no locus standi to make a demand for promotion of an individual workman in violation of cadre scheme of JBCCI in respect of E&M personnel.
7. It is further submitted by the management that the cadre scheme is binding to the management as well as all unions functioning in the coal industry. There is no provision in the cadre scheme for time bound promotion of a workman as claimed by the union. The promotion of workman is being done on the recommendation of DPC duly constituted by the cadre controlling authority subject to vacancy according to man power budget. As per cadre scheme and vacancy position he had already been promoted in category VI as Electrician. The workman who holds electrical supervisor ship certificate is only eligible for promotion to the post of Asstt. Foreman (Elec) in T&S Grade "C"
8. Short point to be decided in this case, is whether the workman Ganesh Mahato to be promoted and placed above Panchanan Mahato. The claim of the management is that Ganesh Mahato the workman could not have Electrical Supervisory Certificate whereas, Panchannan Mahato obtained that and got promotion first for which he says there was no illegality. More over the process of promotion is through DPC.
9. The workman has been examined as WW-1. He fairly admitted that he does not have the Electrical Supervisor Certificate. He further admitted that without that certificate one can not get promotion. That being so on his own admission the workman is not entitled to get any promotion.
10. Moreover he raised dispute at the fag end of his service. Usually Tribunal is very slow to interfere in the promotion unless there gross irregularities. This case is not coming under that.
11. Considering the facts and circumstances of this case, I hold that the action of the management of BOCP mines, Block II Area of M/S BCCL in denying promotion in category IV in 1980, Category V in 1982, category VI in 1985, T&S grade-C in 1990, T&S Grade -B from the year 1998 and in Grade -A from the year 2004 to Shri Ganesh Mahatha, Electrician is justified and legal. Hence he is not entitled to get any relief.

This is my award.

R. K. SARAN, Presiding Officer

नई दिल्ली, 27 अप्रैल, 2017

का.आ. 1165.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीसीसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 03/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27.04.2017 को प्राप्त हुआ था।

[सं. एल-20012/177/2004-आईआर (सीएम-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 27th April, 2017

S.O. 1165.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (Ref. No. 03 of 2005) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 27.04.2017.

[No. L-20012/177/2004-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD**

In the matter of reference U/S 10(1) (d) (2A) of I.D. Act, 1947

Reference No. 03/2005

Employer in relation to the management of WWZ Area of M/s. BCCL

AND

Their workman

Present : Shri R.K. Saran, Presiding Officer**Appearances:**

For the Employers : None

For the workman : Shri B.B. Pandey, Advocate

State : Jharkhand

Industry : Coal

Dated- 23/03/2017

AWARD

By order No. L-20012/177/2004-IR(C-I) dated 15/12/2004, the central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

“Whether the action of Management in not correcting the date of birth of Sri Basudeo Mandal as 12/10/1945 as per his matriculation certificate and all other evidence available on record and to superannuate him taking his date of birth as 12/10/1939 is just, fair and legal? If not, to what relief is Sri Basudeo Mandal entitled?”

2. This Case is received from the Ministry on 03.01.2005. After receipt of the reference, both parties are noticed. During the pendency of the case Ld. Counsel of the sponsoring Union submits that workman is not interested to contest the case. It is felt that the dispute between parties is resolved. Hence “No dispute” award is passed. communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 27 अप्रैल, 2017

का.आ. 1166.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीसीसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 99/1996) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27.04.2017 को प्राप्त हुआ था।

[सं. एल-20012/316/1995-आईआर (सीएम-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 27th April, 2017

S.O. 1166.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (Ref. No. 99 of 1996) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 27.04.2017.

[No. L-20012/316/1995-IR (CM-1)]

M. K. SINGH, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD**

In the matter of reference U/S 10(1) (d) (2A) of I.D. Act, 1947

Reference No. 99/1996

Employer in relation to the management of Block II Area, M/s. BCCL

AND

Their workman

Present : Shri R.K. Saran, Presiding Officer

Appearances:

For the Employers : Shri D.K. Verma, Advocate

For the workman : None

State : Jharkhand

Industry : Coal

Dated- 24/03/2017

AWARD

By order No. L-20012/316/1995-IR(C-I) dated 01/11/1996, the central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

“Whether the demand by the Union for age revision of Smt. Manwa kamin, Wagon loader on the basis of age recorded by the management of her husband is legal and justified? If so, to what relief is the workman entitled ?”

2. After receipt of the reference, both parties are noticed. But appearing for certain dates none appears subsequently. Case remains pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed. Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 27 अप्रैल, 2017

का.आ. 1167.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीसीसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 04/1996) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27.04.2017 को प्राप्त हुआ था।

[सं. एल-20012/10/1995-आईआर (सीएम-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 27th April, 2017

S.O. 1167.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (Ref. No. 04 of 1996) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 27.04.2017.

[No. L-20012/10/1995-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD

In the matter of reference U/S 10(1) (d) (2A) of I.D. Act, 1947

Reference No. 04/1996

Employer in relation to the management of Bagdigi Colliery of M/s. BCCL

AND

Their workman

Present : Shri R.K. Saran, Presiding Officer

Appearances:

For the Employers : Shri N.M. Kumar, Advocate

For the workman : None

State : Jharkhand

Industry : Coal

Dated- 24/03/2017

AWARD

By order No. L-20012/10/1995-IR(C-I) dated 27/12/1998, the central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

“Whether the demand of the Union that the management should review the date of birth of Shri Ram Tahal Kurmi and accept 1.1.39 as the date of birth is justified? If so, to what relief is the workman entitled to?”

2. After receipt of the reference, both parties are noticed. But appearing for certain dates none appears subsequently on behalf of the workman.. Case remains pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed. Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 27 अप्रैल, 2017

का.आ. 1168.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीसीसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 51/1996) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27.04.2017 को प्राप्त हुआ था।

[सं. एल-20012/201/1995-आईआर (सीएम-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 27th April, 2017

S.O. 1168.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (Ref. No. 51 of 1996) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 27.04.2017.

[No. L-20012/201/1995-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD**

In the matter of reference U/S 10(1) (d) (2A) of I.D. Act, 1947

Reference No. 51/1996

Employer in relation to the management of Jogidih Colliery of M/s. BCCL

AND

Their workman

Present : Shri R.K. Saran, Presiding Officer**Appearances:**

For the Employers : Shri D.K. Verma, Advocate

For the workman : None

State : Jharkhand

Industry : Coal

Dated- 23/03/2017

AWARD

By order No. L-20012/201/1995-IR(C-I) dated 20/08/1996, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

“Whether the action of the Govindpur Area No. III of M/s. BCCL Sonardih, Dhanbad in dismissing Shri Hiralal Bhuiya Miner/Loader w.e.f. 17/09/1992 is justified? If not, to what relief is the concerned workman entitled ?”

2. After receipt of the reference, both parties are noticed. But appearing for certain dates none appears subsequently by the union. Case remains pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence, No Dispute Award is passed. Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 27 अप्रैल, 2017

का.आ. 1169.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीसीसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 14/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27.04.2017 को प्राप्त हुआ था।

[सं. एल-20012/93/2013-आईआर (सीएम-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 27th April, 2017

S.O. 1169.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (Ref. No. 14 of 2014) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 27.04.2017.

[No. L-20012/93/2013-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD**

In the matter of reference U/S 10(1) (d) (2A) of I.D. Act, 1947

Reference No. 14/2014

Employer in relation to the management of Bastacolla Area of M/s. BCCL

AND

Their workman

Present : Shri R.K. Saran, Presiding Officer

Appearances:

For the Employers : Shri S.K.Behra, Astt. Manager

For the workman : Shri B.K.Mishra, Advocate

State : Jharkhand

Industry : Coal

Dated- 27/03/2017

AWARD

By order No. L-20012/93/2013-IR (CM-1) dated 13/02/2014, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

“Whether the action of the management of Bastacolla Area of M/s. BCCL in denial to access the actual age/date of birth by Apex Medical Board of the Company in respect of Smt. Radhika Devi is fair and justified? To what relief the concerned workman is entitled to?”

2. The case is received from the Ministry of Labour on 24.02.2014. After receipt of reference, both Parties are noticed. The workman files their written statement on 20.01.2016. The management files their written statement-cum-rejoinder on 14.07.2016. No witness examined on behalf of the workman. But one witness examined on behalf of the management. Document of both side is marked as W-1 to W-4 and M-1 to M-11 as exhibit.
3. The case of the workman is that she joined service in BCCL in the year 2001 as General Mazdoor in place of her deceased husband Late Jhagru Rajbhar who died in harness. But after her appointment on 18/07/2001 a service excerpt was prepared by the management without any medical ossification test or any medical test determined the age of the petitioner as 44 year on 17.06.2001.
4. It is further submitted that she is an illiterate lady, the management without ascertaining the actual date of Birth accepted the date of birth mentioned in the service excerpt of the workman without any basis, for her age determination but no Apex Medical Board was formed for dertermination of her actual date of Birth.
5. On the other hand, the case of the management is that after the death of her husband Smt Radhika Devi filed all relevant document which was required for appointment on campassionate ground i.e Application form , verification form, Identification form, Attestation form duly filed by her and signed by B.D.O Chakari, Dist- Bhojpur, where date of birth was mentioned as 1957.
6. It is also submitted by the management that as per norms of the company pre-employment medical board was conducted by Apex Medical Board at Koyla Nagar Hospital for ascertaining the fitness and age of the candidate. The age was assessed as 44 years as on 07.06.2001 by medical Board and found fit to join duty, hence she was appointed and to be superannuated of that basis.
7. Short point to be decided in this reference is, whether the concerned workman is to be referred to Apex Medical Board for determination of age or not?
8. The workman submits that the age mentioned in Form “B” register much higher side whereas the workman is young to continue in job. On the other hand the management submitted that the application form , putting the age was filed by the workman herself and on the basis of that she continued in job and accepted that age. But Subsequently she got her photo identity Card, showing her age 1969. So also in Adhar Card, and saying so, she wanted that her case be refered to Apex Medical Board for determination of age.
9. Management also file the PAN card of the workman where age of the workman is mentioned as 07.06.1957. That document is a much earlier document that voter I.D Card and Adhar Card.
10. After hearing both parties and perusing the record, it is clear that earlier documents from “B” Register and the PAN card , the Date of Birth of workman 07/06/1957. Therefore other documents of the workman prepared, subsequently, though public document are self styled documents and on the basis of that the workman’s case is not proper to be refered to Apex Medical Board.
11. Considering the facts and circumstances of this case, it is held that the action of the management of Bastacolla Area of M/s. BCCL in denial to assess the actual age/date of birth again by Apex Medical Board of the Company in respect of Smt. Radhika Devi is fair and proper. Hence she is not entitled to get any relief.

This is my Award.

R. K. SARAN, Presiding Officer

नई दिल्ली, 27 अप्रैल, 2017

का.आ. 1170.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीसीसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 06/1996) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27.04.2017 को प्राप्त हुआ था।

[सं. एल-20012/28/1995-आईआर (सीएम-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 27th April, 2017

S.O. 1170.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (Ref. No. 06 of 1996) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 27.04.2017.

[No. L-20012/28/1995-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD

In the matter of reference U/S 10(1) (d) (2A) of I.D. Act, 1947

Reference No. 06/1996

Employer in relation to the management of Jealgora Area of M/s. BCCL

AND

Their workman

Present : Shri R.K. Saran, Presiding Officer

Appearances:

For the Employers : None

For the workman : None

State : Jharkhand

Industry : Coal

Dated- 23/03/2017

AWARD

By order No. L-20012/28/1995-IR(C-I) dated 29/01/1999, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

“Whether the action of the management of Jealgora Colliery of M/s BCCL in denial to correct the date of birth as 03/07/1938 of Shri Ganesh kahar, Stowing mazdoor is justified? If not, to what relief the concerned workman is entitled?”

2. After receipt of the reference, both parties are noticed. But appearing for certain dates none appears subsequently. Case remains pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed. Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 27 अप्रैल, 2017

का.आ. 1171.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीसीसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 55/1996) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27.04.2017 को प्राप्त हुआ था।

[सं. एल-20012/233/1995-आईआर (सीएम-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 27th April, 2017

S.O. 1171.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1,

Dhanbad (Ref. No. 55 of 1996) as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 27.04.2017.

[No. L-20012/233/1995-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD

In the matter of reference U/S 10(1) (d) (2A) of I.D. Act, 1947

Reference No. 55/1996

Employer in relation to the management of Sudamdih Coal Washery, M/s. BCCL

AND

Their workman

Present : Shri R.K. Saran, Presiding Officer

Appearances:

For the Employers : Shri D.K. Verma, Advocate

For the workman : None

State : Jharkhand

Industry : Coal

Dated- 27/03/2017

AWARD

By order No. L-20012/233/1995-IR(C-I) dated 21/08/1996, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

“Whether the action of the management of Sudamdih coal washery of M/s. BCCL in dismissing Sri Ram Chandra Rajwar from service is justified? If not, to what relief is the concerned workman entitled?”

2. After receipt of the reference, both parties are noticed. But appearing for certain dates none appears subsequently by the workman. Case remains pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed. Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 27 अप्रैल, 2017

का.आ. 1172.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीसीसीएल के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 46/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27.04.2017 को प्राप्त हुआ था।

[सं. एल-20012/85/2015-आईआर (सीएम-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 27th April, 2017

S.O. 1172.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (Ref. No. 46 of 2015) as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 27.04.2017.

[No. L-20012/85/2015-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD**

In the matter of reference U/S 10(1) (d) (2A) of I.D. Act, 1947

Reference No. 46/2015

Employer in relation to the management of Govindpur Area of M/s. BCCL

AND

Their workman

Present : Shri R.K. Saran, Presiding Officer**Appearances:**

For the Employers : Shri U.N. Lall, Advocate

For the workman : Shri B.B. Pandey, Advocate

State : Jharkhand

Industry : Coal

Dated- 27/03/2017

AWARD

By order No.-L-20012/85/2015- IR-(CM-I), dated. 17/09/2015 the Central Govt. in the Ministry of Labour has, in exercise of powers conferred by clause (d) of Sub –Section (1) and Sub-Section (2A) of Section 10 of the Industrial Disputes Act.1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

“Whether the action of the management of New Akashkinari colliery under Govindpur Area of M/s. BCCL in dismissing Sri Rajeshwar Bhuia from the services vide office order dated 23.9/04.10.2002 is fair and justified? To what relief the concerned workman is entitled to?”

2. The case is received from the Ministry of Labour on 01.10.2015 After receipt of reference , both parties are noticed. The workman files their written statement on 23.11.2015. And the management files their written statement - cum-rejoinder on 28.04.2016.
3. The short point involved in this reference is that the workman has been dismissed from his services on absenteeism.
4. During Preliminary hearing, it is revealed that the case is dismissal of workman on the ground of long absence on duty. But he has already out of service for 15 years. It is felt to give another chance to the workman to serve.
5. Considering the facts and circumstances of this case, I hold that he be taken into job as a fresh employee as cat-I scale. But the workman be kept under probation for a period two year . Therefore the question of giving back wages does not arise at all.

This is my Award.

R. K. SARAN, Presiding Officer

नई दिल्ली, 28 अप्रैल, 2017

का.आ. 1173.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स सिक्वोरिटी प्लेसमेंट एंड डिटेक्टिव सर्विस लिमिटेड (पी) के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं. 1, दिल्ली के पंचाट (संदर्भ संख्या 111/2016) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28.04.2017 को प्राप्त हुआ था।

[सं. एल-12025/01/2017-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 28th April, 2017

S.O. 1173.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 111/2016) of the Central Government Industrial Tribunal-cum-

Labour Court No. 1, Delhi as shown in the Annexure, in the industrial dispute between the management of M/s. Vigilant Security Placement & Detective Service (P) Ltd. and their workmen, received by the Central Government on 28.04.2017.

[No. L-12025/01/2017-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

IN THE COURT OF SHRI AVTAR CHAND DOGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO.1, KARKARDOOMA COURT COMPLEX, DELHI

ID No.111/2016

Shri Pankaj Kumar Verma, S/o Shri Bachchu Lal,
House No.348, Gali No.5, Sangam Vihar,
Wazirabad, Delhi – 110 084, through

Janhit Mazdoor Union Delhi Pradesh (Regd.3978),
C-9, Lal Bagh, Opposite Factory A-67/2,
G.T. Karnal Road, Azadpur,
Delhi-110 033

...Workman

Versus

M/s Vigilant Security Placement & Detective Service (P) Ltd.,
P-23, Old Double Storey,
Lajpat Nagar - IV,
New Delhi-110 024

...Management

AWARD

Claim statement was filed under the provisions of sub section (2) of section 2 of the Act. The claimant projected that a period of 45 days stood expired from the date of his filing a claim statement/application before the Conciliation Officer. Sub section (2) of section 2A of the Act, empowers a claimant to raise his dispute before this Tribunal in case of discharge, dismissal, retrenchment or otherwise termination of his services, without a dispute being referred by the appropriate Govt. under sub section (1) of section 10 of the Act. In view of these facts, this deemed reference was entertained by this Tribunal.

2. It is averred in the statement of claim that Shri Pankaj Kumar Verma S/o Shri Bachchu Lal, joined services with M/s Vigilant Security Placement & Detective Services Pvt. Ltd. (hereinafter referred to as the management) as Office boy on 04.09.2012. He was working at DCOS,/Store Khyber pass, Delhi. He worked diligently and honestly with the management. His last drawn wages were Rs.9174.00 per month. He never gave any chance of complaint to the management. The claimant demanded regularization, provident fund etc. in writing, due to which the management bore grudge against the claimant, his wages for the period 01.01.2016 to 21.01.2016 was withheld and his services were terminated illegally on 28.01.2016. He has worked continuously for 240 days in each calendar Year. No one month notice or pay in lieu thereof or retrenchment compensation was paid to the claimant. Thereafter, a demand notice was sent to the management on 30.01.2016, to which no reply was given by the management. The claimant lodged a complaint with the Delhi Government, who forwarded the complaint to the Regional Labour Commissioner. He has claimed reinstatement in service with full back wages.

3 Claim was resisted by the management taking preliminary objections of the claim not being maintainable as the principal employer, Delhi Metro Rail Corporation has not been impleaded as a party, claimant not approaching the Tribunal with clean hands, concealing of facts, claimant refusing to accept transfer orders, not reporting to the fresh place of posting etc. As he did not report for duties to his transferee office, his salary for the month of January 2016 was not paid. On merits, management has denied the material averments contained therein. In fact, complaint regarding deposit of provident fund, matter was investigated by the PF Department and nothing was found adverse against the management. Further, all legal facilities were being extended to the claimant. It is also denied that the claimant has put in 240 days of continuous services prior to his termination. On receipt of demand notice, the claimant was again directed to report for duties at his transferee office. However, the claimant did not report for duties at the transferee office, which clearly shows that the claimant was no more interested in service of the management. Finally, it has been prayed that the claim may be dismissed.

4. Rejoinder was filed on behalf of the claimant wherein the averments made in the statement of claim have been re-asserted. The matter was listed, thereafter, for filing of documents by the parties in support of the stand taken in their respective pleadings.

5. At this stage, it was noticed by the Tribunal that the claimant has filed a claim against a private company which is not covered under definition of appropriate Government under section 2(a) of the Industrial Disputes Act, 1947. It is clear from perusal of Section 2(a) of the Act that in relation to such dispute, Central Government is not the appropriate Government in as much as management herein is a private company over which Central Government does not exercise any authority or control nor the management is a public sector underling or subsidiary company owned or controlled by Central Government. In view of this, Shri Raj Kumar, A/R for the claimant fairly conceded that this case cannot continue being not maintainable. His statement regarding non-prosecution or withdrawal was separately recorded.

6. When Central Government is not the appropriate Government for adjudication of the dispute, this Tribunal cannot invoke its jurisdiction to adjudicate the issues on merits. Consequently, the Tribunal refrains its hands from adjudication. An award is passed, in view of the observations made above. It be sent to the appropriate Government for publication.

Dated : April 10, 2017

A. C. DOGRA, Presiding Officer

नई दिल्ली, 28 अप्रैल, 2017

का.आ. 1174.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स सिक्वोरिटी प्लेसमेंट एंड डिटेक्टिव सर्विस लिमिटेड (पी) के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं. 1, दिल्ली के पंचाट (संदर्भ संख्या 95/2016) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28.04.2017 को प्राप्त हुआ था।

[सं. एल-12025/01/2017-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 28th April, 2017

S.O. 1174.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 95/2016) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Delhi as shown in the Annexure, in the industrial dispute between the management of M/s. Vigilant Security Placement & Detective Service (P) Ltd. and their workmen, received by the Central Government on 28.04.2017.

[No. L-12025/01/2017-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

IN THE COURT OF SHRI AVTAR CHAND DOGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO.1, KARKARDOOMA COURT COMPLEX, DELHI

ID No. 95/2016

Shri Sachin, S/o Shri Bachchu Lal,
House No.348, Gali No.5, Sangam Vihar,
Wazirabad, Delhi – 110 084, through

Janhit Mazdoor Union Delhi Pradesh (Regd.3978),
C-9, Lal Bagh, Opposite Factory A-67/2,
G.T. Karnal Road, Azadpur,
Delhi-110 033

...Workman

Versus

M/s Vigilant Security Placement & Detective Service (P) Ltd.,
P-23, Old Double Storey,
Lajpat Nagar - IV,
New Delhi-110 024

...Management

AWARD

Claim statement was filed under the provisions of sub section (2) of section 2 of the Act. The claimant projected that a period of 45 days stood expired from the date of his filing a claim statement/application before the Conciliation Officer. Sub section (2) of section 2A of the Act, empowers a claimant to raise his dispute before this Tribunal in case

of discharge, dismissal, retrenchment or otherwise termination of his services, without a dispute being referred by the appropriate Govt. under sub section (1) of section 10 of the Act. In view of these facts, this deemed reference was entertained by this Tribunal.

2. It is averred in the statement of claim that Shri Sachin S/o Shri Bachchu Lal, joined services with M/s Vigilant Security Placement & Detective Services Pvt. Ltd. (hereinafter referred to as the management) as Office boy on 02.07.2011. He was working at DCOS,/Store Shastri Park, Delhi. He worked diligently and honestly with the management. His last drawn wages were Rs.9174.00 per month. He never gave any chance of complaint to the management. The claimant demanded regularization, provident fund etc. in writing, due to which the management bore grudge against the claimant, his wages for the period 01.01.2016 to 21.01.2016 was withheld and his services were terminated illegally on 21.01.2016. He has worked continuously for 240 days in each calendar Year. No one month notice or pay in lieu thereof or retrenchment compensation was paid to the claimant. Thereafter, a demand notice was sent to the management on 23.01.2016, to which no reply was given by the management. The claimant lodged a complaint with the Delhi Government, who forwarded the complaint to the Regional Labour Commissioner. He has claimed reinstatement in service with full back wages.

3 Claim was resisted by the management taking preliminary objections of the claim not being maintainable as the principal employer, Delhi Metro Rail Corporation has not been impleaded as a party, claimant not approaching the Tribunal with clean hands, concealing of facts, claimant refusing to accept transfer orders, not reporting to the fresh place of posting etc. As he did not report for duties to his transferee office, his salary for the month of January 2016 was not paid. On merits, management has denied the material averments contained therein. In fact, complaint regarding deposit of provident fund, matter was investigated by the PF Department and nothing was found adverse against the management. Further, all legal facilities were being extended to the claimant. It is also denied that the claimant has put in 240 days of continuous services prior to his termination. On receipt of demand notice, the claimant was again directed to report for duties at his transferee office. However, the claimant did not report for duties at the transferee office, which clearly shows that the claimant was no more interested in service of the management. Finally, it has been prayed that the claim may be dismissed.

4. Rejoinder was filed on behalf of the claimant wherein the averments made in the statement of claim have been re-asserted. The matter was listed, thereafter, for filing of documents by the parties in support of the stand taken in their respective pleadings.

5. At this stage, it was noticed by the Tribunal that the claimant has filed a claim against a private company which is not covered under definition of appropriate Government under section 2(a) of the Industrial Disputes Act, 1947. It is clear from perusal of Section 2(a) of the Act that in relation to such dispute, Central Government is not the appropriate Government in as much as management herein is a private company over which Central Government does not exercise any authority or control nor the management is a public sector underling or subsidiary company owned or controlled by Central Government. In view of this, Shri Raj Kumar, A/R for the claimant fairly conceded that this case cannot continue, being not maintainable. His statement regarding non-prosecution or withdrawal was separately recorded.

6. When Central Government is not the appropriate Government for adjudication of the dispute, this Tribunal cannot invoke its jurisdiction to adjudicate the issues on merits. Consequently, the Tribunal refrains its hands from adjudication. An award is passed, in view of the observations made above. It be sent to the appropriate Government for publication.

Dated : April 10, 2017

A. C. DOGRA, Presiding Officer

नई दिल्ली, 28 अप्रैल, 2017

का.आ. 1175.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर रेलवे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 10/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28.04.2017 को प्राप्त हुआ था।

[सं. एल-41011/106/2013-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 28th April, 2017

S.O. 1175.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 10/2014) of the Central Government Industrial Tribunal-cum-

Labour Court, Lucknow as shown in the Annexure, in the industrial dispute between the management of Northern Railway and their workmen, received by the Central Government on 28.04.2017.

[No. L-41011/106/2013-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

PRESENT : RAKESH KUMAR, Presiding Officer

I.D. No. 10/2014

Ref. No. L-41011/106/2013-IR (B-I) dated 03.03.2014

BETWEEN :

The Zonal President
Rail Sewak Sangh,
49 Tilak Nagar
Lucknow-226004

AND

1. The Divisional Personnel Officer
Northern Railway, Ashok Marg,
Hazratganj
Lucknow
2. The Divisional Railway Manager,
Northern Railway,
DRM Office, Hazratganj
Lucknow
3. The Divisional Operating Manager
Northern Railway,
Hazratganj
Lucknow

AWARD

1. By order No. L-41011/106/2013-IR(B-I) dated 03.03.2014 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Zonal President, Railway Sewak Sangh, Lucknow (espousing cause of late Sri Mahendra Singh) and the DRM,NR, Lucknow for adjudication.

2. The reference under adjudication is:

“KYA PRABANDHAN, UTTAR RAILWAY, LUCKNOW DWARA SRI MAHENDRA SINGH, ELECTRICAL HELPER-II KO WARSH 1987-88 KE PANNEL ME SAFAL GHOSHIT PAYE JANE PER USSE JUNIORS KO DIYA GAYA LABH JAISE, VETAN, VARISTHTA, BONUS EVAM PADONATTI KA LABH NA DIYA JAANA NYAYOCHIT EVAM VAIDH HAIN? YADI NAHIN TO KAMGAR/SHRAMSANGH KIS RAHAT KO PANE KA HAQDAAR HAIN?”

3. The workman has stated in brief in the claim statement W-3 that he was appointed as Substitute Porter on 4.09.1976 under the Station Supdt. Northern Railway, Charbagh Lucknow, and after 120 days of continuous working he attained temporary status, thereafter worked upto 1988. In the meantime screening was performed for the purpose of regularization as Porter in group ‘D’ service and he was found suitable as evident from letter dated 3.7.2008 sent with reference to another letter issued by General Manager on 22.5.2008. The workman has further stated that in the said screening 535 Substitute Porters were considered, and several juniors were also screened and were regularized in the service w.e.f. 1988 but workman was ignored although he was found suitable and had complete 3562 days of continuous working to his credit on the date of screening but the management deliberately victimized him by concealing the result of screening and other employees junior to him were designated as porters. Under such circumstances I.D. 252/89 was registered in CGIT, Kanpur and award dated 17.12.1990 was passed in faour of the workman and he was declared entitled to be regularized on becoming successful. On another screening he was declared successful w.e.f. 12.10.1992 even then the regular post was not given to him; and after direction given by the Hon’ble High Court while

disposing writ petition no. 1627/2004 it has confirmed its previous order and gave opportunity to the workman to approach appropriate Forum for implementation of the award in I.D. 252/89.

4. The petitioner has further asserted in the claim statement that during process of implementation of Hon'ble High Court's order the management has disclosed the fact in correspondence between the Railway Authorities that the concerned workman had already passed screening test in the year 1987-88 but his name was not placed in the panel of 535 similarly situated workmen, the workman got the knowledge of this unfair labour practice and thereafter raised the present Industrial Dispute. It has been alleged that the management concealed the above facts and the regularized other workmen including several juniors, and workman was deprived of his regularization from Jan. 1988 and salary, seniority bonus etc. was not granted to him. With the aforesaid pleadings the workman has requested to hold him entitled for his regularization w.e.f. the date of panel/screening held for 1987-88, benefits of seniority salary, bonus, leave encashment including cost of litigation has also been claimed by the workman. Punishment under Section 25 U of the I.D. Act. is also requested for the management authorities.

5. Several documents have been enclosed alongwith the claim statement.

6. The management in its written statement M-6 has admitted that several workman had filed I.D. case 152/89 before the CGIT, Kanpur which was decided with certain directions and the applicant workman was not found suitable in the screening conducted in the year 1987 and 1990. The opposite party has stated that the workman has filed OA. No. 434/99 before CAT, Lucknow which was decided against the workman OA, was dismissed on 16.1.2008. The workman preferred Writ Petition 1627/2004 before Hon'ble High Court, Lucknow Bench, Lucknow and interim order dated 16.1.2008 was passed to give the employment to the petitioner and in compliance of that order the management engaged the applicant on the post of Khalasi in Varanasi in the year 2008. The workman is doing job on the same post. It has been further asserted by the management that in obedience of judgment dated 13.8.13 passed by the Hon'ble High Court his services have been regularized vide order dated 3.2.14 and his services were earlier subject to the order of the Hon'ble High Court; and the management order is not mala fide neither any unfair labour practice was adopted. Violation of I.D. Act. has also been denied. The management has stressed that the workman is not entitled for his regularization w.e.f. 1987- 1988. The management has requested to decide the case in its favour.

7. Hon'ble High Court order dated 13.8.13 alongwith other document has also been filed.

8. While denying the grounds taken in the written statement the workman has filed rejoinder W-7, reiterating the pleas taken in the claim statement. Several document have also been filed by the workman.

9. The workman has filed certain documents annexed with W-8. He further filed his affidavit W-9 along with the annexures. He was thoroughly cross examined on behalf of the management.

10. The management has filed affidavit of Sri Samar Jeet Singh, M-14 alongwith annexures. He was also cross examined by learned AR for the workman.

11. Heard the arguments of both the parties at length. Record available with the court has been scanned thoroughly.

12. Both the parties have referred to the award dated 17.12.1990, adjudicated by CGIT, Kanpur in I.D. No. 152/89, where in the matter of regularization of certain workmen including present petitioner Sri Mahendra Singh was considered. In para 13 of this award Hon'ble Tribunal has directed that out of 15 workmen, 9 have already been regularized and the remaining 6 will be regularized in service only if they qualify or declared suitable in the screening test conducted by the Screening Committee. Further it has been directed that if one or some of these workman are not found suitable by the screening committee they shall be given further chance as and when the screening test are held for appearance before the Screening Committee. This matter was further agitated before Hon'ble High Court, and interim order dated 16.1.2008 was passed and it was finally disposed by Hon'ble High Court vide its order dated 13.8.2013. Hon'ble High Court has observed in its final order that since the petitioner Sri Mahendra Singh is working on the post pursuant to the interim order, so the order dated 16.7.2004 passed by the CAT, Lucknow was set aside and writ has been allowed in terms of the interim order dated 16.7.2008. It has been left open by the Hon'ble High Court for the petitioner Sri Mahendra Singh to approach appropriate forum as provided under the law with regard to regularization or execution of the award passed by the Industrial Tribunal

13. The workman in its affidavit filed before this Tribunal has supported the Claim Statement. The matter pertaining to regularization adjudicated by the Hon'ble Tribunal and Hon'ble High Court has been thoroughly cross examined by the management. It has also been admitted that the petitioner has been appointed by the management in pursuance of the order passed by the Hon'ble High Court, Lucknow in Writ Petition No. 1627(S/B)/2004. The learned AR for the workman has laid emphasis on the latter dated 22.5.2008 issued from the office of General Manager, New Delhi to the DRM, Northern Railway, Lucknow. Its following para has been referred and relied upon by the workman:

“The screening of 535 staff was conducted in the year 1988 in which Sri Mahinder Singh S/o Sri Ujjagar Singh was found suitable but he was not placed on the panel. It is seen that a screening was also conducted in the year 1990 but he was declared un-suitable. No relevant papers have been furnished by the division.”

14. It may be quite pertinent to mention here that the aforesaid letter dated 22.5.2008 issued from the office of General Manager, NR, New Delhi, has been made part of the affidavit W-9, by the petitioner as paper No. 9/16-17. The management in its reply has submitted affidavit of Mr. Samar Jit Singh, APO, NR, DRM office, Lucknow as M-14 but the veracity and authenticity of GM's letter dated 22.5.2008 has neither been challenged, nor elaborated by the management in its affidavit M-14, although Hon'ble CGIT, Kanpur award dated 17.12.1990, appointment letter dated 18.11.2008, bio-data and another letter dated 3.12.14 have been annexed by the management with its affidavit. Moreover, specific question was put up before management witness in cross examination regarding the letter dated 22.5.2008 and other letters. Even then the management has not made any efforts to explain the relevant para of the letter dated 22.5.2008, quoted hereinabove.

15. Learned AR for the opposite party has referred following Rulings;

1. 1993,SUPP(4),SCC,Ratan Chandra Samant Vs Union of India page 67.
2. 2007(6),AWC,page 6556 Hon'ble Supreme Court.
3. AIR 1971 SC page 1676.

16. Learned AR for the workman submits that the aforesaid pronouncements of Hon'ble Supreme Court are being mis-interpreted by the management, and these Rulings do not adversely effect the legal right of the workman.

17. During the course of argument, order dated 16.7.2004 passed by Hon'ble CAT, Lucknow in OA No. 434/99 has also been referred by the management. Admittedly, this order has been set aside by Hon'ble High Court, Lucknow vide its order dated 13.8.2013 passed in Writ petition No. 1627(S/B)/2004.

18. Award dated 17.12.1990 passed by Hon'ble CGIT, Kanpur and order dated 13.8.2013 passed by Hon'ble High Court, Lucknow, is not denied by either of the parties. CGIT, Kanpur has clearly directed that the workman is entitled for his regularization if found suitable by the Screening Committee. The important letter no. 220-E/190/CL/CAT/Lko/IV dated 22.5.2008 sent by General Manager, NR, New Delhi to DRM,NR, Lucknow, which has not been found forged or fabricated by any cogent evidence submitted before this Tribunal, refers to the material fact that Sri Mahendra Singh S/o Sri Ujjagar Singh was found suitable as per the Screening conducted in the year 1988, but he was not placed on the panel, further in another screening of the year 1990 he was declared unsuitable, no relevant papers have been submitted by the Division. As a natural legal consequence of the screening conducted in the year 1988, the workman ought to have been regularized from the relevant date with all the service benefits as per Rules.

19. After having heard both the parties at length and prudent analysis of the evidence available on the record, it is inferred that the action of the management in not giving all the consequential benefits to the petitioner after the result of the Screening conducted for the year 1987-88, can not be treated as legal or proper. The petitioner workman is entitled for his regularization from the relevant date and all the consequential benefits such as salary, seniority, bonus and promotion etc. should also be given to him within ten weeks from the date of publication of this award, failing which the workman shall be paid interest also on the pecuniary benefits @ 6% per annum by the management.

20. Award as above.

LUCKNOW

17.04.2017

RAKESH KUMAR, Presiding Officer

शुद्धिपत्र

नई दिल्ली, 28 अप्रैल, 2017

का.आ. 1176.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर रेलवे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 33/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28.04.2017 को प्राप्त हुआ था।

[सं. एल-41011/102/2010-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

CORRIGENDUM

New Delhi, the 28th April, 2017

S.O. 1176.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 33/2011) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the industrial dispute between the management of Uttar Railway and their workmen, received by the Central Government on 28.04.2017.

[No. L-41011/102/2010-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW****PRESENT :** RAKESH KUMAR, Presiding Officer**I.D. No. 33/2011**

Ref. No. L-41011/102/2010-IR (B-I) dated 14.03.2011

BETWEEN :

Mandal Sangthan Mantri
Uttar Railway Karmchari Union
283/63 Kh, Garhi Kananora (Premwati Nagar)
PO – Manak Nagar
Lucknow – 16.
(Espousing cause of Sri Om Prakash)

AND

Senior Divisional Railway Manager (Personnel)
Northern Railway, Hazratganj
Lucknow.

CORRIGENDUM

1. By order No. L-41011/102/2010-IR(B-I) dated: 14.03.2011 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Mandal Sangthan Mantri, Uttar Railway Karmchari Union, 283/63 Kh, Garhi Kananora(Premwati Nagar), PO – Manak Nagar, Lucknow and Senior Divisional Railway Manager (Personnel), Northern Railway, Hazratganj, Lucknow for adjudication to this CGIT-cum-Labour Court, Lucknow; and this Tribunal adjudicated the said reference vide its award dated 29.12.2015; wherein some typographical error has been committed in 3rd line of para 17 of the said award.

2. Therefore, following correction is being incorporated in the award dated 29.12.2015 of this Tribunal:

“The name of the management, mentioned as “**Central Railway**”, in 3rd line of para 17 be read as “**Northern Railway**”.

LUCKNOW
05.09.2016

RAKESH KUMAR, Presiding Officer

शुद्धिपत्र

नई दिल्ली, 28 अप्रैल, 2017

का.आ. 1177.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर रेलवे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 102/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28.04.2017 को प्राप्त हुआ था।

[सं. एल-41011/13/2011-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

CORRIGENDUM

New Delhi, the 28th April, 2017

S.O. 1177.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 102/2011) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the industrial dispute between the management of Uttar Railway and their workmen, received by the Central Government on 28.04.2017.

[No. L-41011/13/2011-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW****PRESENT : RAKESH KUMAR**, Presiding Officer**I.D. No. 102/2011**

Ref. No. L-41011/13/2011-IR (B-I) dated 26.05.2011

BETWEEN :

Mandal Sangthan Mantri
Uttar Railway Karmchari Union
283/63 Kh, Garhi Kanauri (Premwati Nagar)
PO – Manak Nagar
Lucknow – 16.
(Espousing cause of Sri Om Prakash Verma)

AND

Senior Divisional Personnel Officer
Northern Railway,
DRM Office, Hazratganj
Lucknow.

CORRIGENDUM

1. By order No. L-41011/13/2011-IR(B-I) dated: 26.05.2011 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Mandal Sangthan Mantri, Uttar Railway Karmchari Union, 283/63 Kh, Garhi Kanauri (Premwati Nagar), Post – Manak Nagar, Lucknow and Senior Divisional Personnel Officer, Northern Railway, DRM Office, Hazratganj, Lucknow for adjudication to this CGIT-cum-Labour Court, Lucknow and this Tribunal adjudicated the said reference vide its award dated 02.07.2015; wherein some typographical error has been committed in 3rd line of para 17 of the said award.

2. Therefore, following correction is being incorporated in the award dated 02.07.2015 of this Tribunal:

“The name of the management, mentioned as **“Central Railway”**, in 3rd line of para 17 be read as **“Northern Railway”**.”

LUCKNOW
05.09.2016

RAKESH KUMAR, Presiding Officer

शुद्धिपत्र

नई दिल्ली, 28 अप्रैल, 2017

का.आ. 1178.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर रेलवे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 35/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28.04.2017 को प्राप्त हुआ था।

[सं. एल-41011/104/2010-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

CORRIGENDUM

New Delhi, the 28th April, 2017

S.O. 1178.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 35/2011) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the industrial dispute between the management of Uttar Railway and their workmen, received by the Central Government on 28.04.2017.

[No. L-41011/104/2010-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW****PRESENT :** RAKESH KUMAR, Presiding Officer**I.D. No. 35/2011**

Ref. No. L-41011/104/2010-IR (B-I) dated 14.03.2011

BETWEEN :

Mandal Sangthan Mantri
Uttar Railway Karmchari Union
283/63 Kh, Garhi Kananora (Premwati Nagar)
PO – Manak Nagar
Lucknow – 16.
(Espousing cause of Sri Ashok Kumar Mishra)

AND

Senior Divisional Railway Manager (Personnel)
Northern Railway, Hazratganj
Lucknow

CORRIGENDUM

1. By order No. L-41011/104/2010-IR(B-I) dated: 14.03.2011 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Mandal Sangthan Mantri, Uttar Railway Karmchari Union, 283/63 Kh, Garhi Kananora (Premwati Nagar), PO – Manak Nagar, Lucknow and Senior Divisional Railway Manager (Personnel), Northern Railway, Hazratganj, Lucknow for adjudication to this CGIT-cum-Labour Court, Lucknow and this Tribunal adjudicated the said reference vide its award dated 02.07.2015; wherein some typographical error has been committed in 3rd line of para 17 of the said award.

2. Therefore, following correction is being incorporated in the award dated 02.07.2015 of this Tribunal:

“The name of the management, mentioned as “Central Railway”, in 3rd line of para 17 be read as “Northern Railway”.

LUCKNOW
05.09.2016

RAKESH KUMAR, Presiding Officer

शुद्धिपत्र

नई दिल्ली, 28 अप्रैल, 2017

का.आ. 1179.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर रेलवे के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 37/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28.04.2017 को प्राप्त हुआ था।

[सं. एल-41011/106/2010-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

CORRIGENDUM

New Delhi, the 28th April, 2017

S.O. 1179.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 37/2011) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the industrial dispute between the management of Uttar Railway and their workmen, received by the Central Government on 28.04.2017.

[No. L-41011/106/2010-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW****PRESENT : RAKESH KUMAR**, Presiding Officer**I.D. No. 37/2011**

Ref. No. L-41011/106/2010-IR (B-I) dated 14.03.2011

BETWEEN :

Mandal Sangthan Mantri
Uttar Railway Karmchari Union
283/63 Kh, Garhi Kananora (Premwati Nagar)
PO – Manak Nagar
Lucknow – 16.
(Espousing cause of Sri Jai Lakhan Dixit)

AND

Senior Divisional Railway Manager (Personnel)
Northern Railway, Hazratganj
Lucknow

CORRIGENDUM

1. By order No. L-41011/106/2010-IR(B-I) dated: 14.03.2011 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Mandal Sangthan Mantri, Uttar Railway Karmchari Union, 283/63 Kh, Garhi Kananora (Premwati Nagar), PO – Manak Nagar, Lucknow and Senior Divisional Railway Manager (Personnel), Northern Railway, Hazratganj, Lucknow for adjudication to this CGIT-cum-Labour Court, Lucknow; and this Tribunal adjudicated the said reference vide its award dated 16.09.2015; wherein some typographical error has been committed in 3rd line of para 17 of the said award.

2. Therefore, following correction is being incorporated in the award dated 16.09.2015 of this Tribunal:

“The name of the management, mentioned as “**Central Railway**”, in 3rd line of para 17 be read as “**Northern Railway**”.

LUCKNOW
05.09.2016

RAKESH KUMAR, Presiding Officer

शुद्धिपत्र

नई दिल्ली, 28 अप्रैल, 2017

का.आ. 1180.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर रेलवे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 41/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28.04.2017 को प्राप्त हुआ था।

[सं. एल-41011/110/2010-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

CORRIGENDUM

New Delhi, the 28th April, 2017

S.O. 1180.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 41/2011) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the industrial dispute between the management of Uttar Railway and their workmen, received by the Central Government on 28.04.2017.

[No. L-41011/110/2010-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW****PRESENT : RAKESH KUMAR**, Presiding Officer**I.D. No. 41/2011**

Ref. No. L-41011/110/2010-IR (B-I) dated 14.03.2011

BETWEEN :

Mandal Sangthan Mantri
Uttar Railway Karmchari Union
283/63 Kh, Garhi Kananora (Premwati Nagar)
PO – Manak Nagar
Lucknow – 16.
(Espousing cause of Sri Hira Lal)

AND

Senior Divisional Railway Manager (Personnel)
Northern Railway, Hazratganj
Lucknow

CORRIGENDUM

1. By order No. L-41011/110/2010-IR(B-I) dated: 14.03.2011 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Mandal Sangthan Mantri, Uttar Railway Karmchari Union, 283/63 Kh, Garhi Kananora(Premwati Nagar), PO – Manak Nagar, Lucknow and Senior Divisional Railway Manager (Personnel), Northern Railway, Hazratganj, Lucknow for adjudication to this CGIT-cum-Labour Court, Lucknow; and this Tribunal adjudicated the said reference vide its award dated 16.09.2015; wherein some typographical error has been committed in 3rd line of para 17 of the said award.

2. Therefore, following correction is being incorporated in the award dated 16.09.2015 of this Tribunal:

“The name of the management, mentioned as “Central Railway”, in 3rd line of para 17 be read as “Northern Railway”.

LUCKNOW
05.09.2016

RAKESH KUMAR, Presiding Officer

शुद्धिपत्र

नई दिल्ली, 28 अप्रैल, 2017

का.आ. 1181.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर रेलवे के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 34/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28.04.2017 को प्राप्त हुआ था।

[सं. एल-41011/103/2010-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

CORRIGENDUM

New Delhi, the 28th April, 2017

S.O. 1181.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 34/2011) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the industrial dispute between the management of Uttar Railway and their workmen, received by the Central Government on 28.04.2017.

[No. L-41011/103/2010-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW****PRESENT : RAKESH KUMAR**, Presiding Officer**I.D. No. 34/2011**

Ref. No. L-41011/103/2010-IR (B-I) dated 14.03.2011

BETWEEN :

Mandal Sangthan Mantri
Uttar Railway Karmchari Union
283/63 Kh, Garhi Kananora (Premwati Nagar)
PO – Manak Nagar
Lucknow – 16.
(Espousing cause of Sri N.K. Mehta)

AND

Senior Divisional Railway Manager (Personnel)
Northern Railway, Hazratganj
Lucknow

CORRIGENDUM

1. By order No. L-41011/103/2010-IR(B-I) dated: 14.03.2011 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Mandal Sangthan Mantri, Uttar Railway Karmchari Union, 283/63 Kh, Garhi Kananora(Premwati Nagar), PO – Manak Nagar, Lucknow and Senior Divisional Railway Manager (Personnel), Northern Railway, Hazratganj, Lucknow for adjudication to this CGIT-cum-Labour Court, Lucknow and this Tribunal adjudicated the said reference vide its award dated 02.07.2015; wherein some typographical error has been committed in 3rd line of para 17 of the said award.

2. Therefore, following correction is being incorporated in the award dated 02.07.2015 of this Tribunal:

“The name of the management, mentioned as **“Central Railway”**, in 3rd line of para 17 be read as **“Northern Railway”**”.

LUCKNOW
05.09.2016

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 28 अप्रैल, 2017

का.आ. 1182.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर पूर्व रेलवे के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 96/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28.04.2017 को प्राप्त हुआ था।

[सं. एल-41012/90/2010-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 28th April, 2017

S.O. 1182.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 96/2011) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the industrial dispute between the management of North Eastern Railway and their workmen, received by the Central Government on 28.04.2017.

[No. L-41012/90/2010-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

PRESENT : RAKESH KUMAR, Presiding Officer

I.D. No. 96/2011

Ref. No. L-41012/90/2010-IR (B-I) dated 13.05.2011

BETWEEN :

Sri Datta Ram Maurya
S/o Sri Brij Lal Maurya
R/o Village Jagdish ghuswa, Post: Munderwa
Distt. Basti (U.P.)

AND

The Divisional Railway Manager
North Eastern Railway,
Ashok Marg
Lucknow (U.P.)

AWARD

1. By order No. L-41012/90/2010-IR(B-I) dated 13.05.2011 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between the Sri Datta Ram Maurya S/o Sri Brij Lal Maurya and the Divisional Railway Manager, North Eastern Railway, Lucknow for adjudication.

2. The reference under adjudication is:

“WHETHER THE ACTION OF THE MANAGEMENT OF NORTH EASTERN RAILWAY, LUCKNOW, IN TERMINATING THE SERVICES OF SRI DATTA RAM MAURYA S/O Sri BRIJ LAL MAURYA, W.E.F. 15.7.1999 IS LEGAL AND JUSTIFIED? TO WHAT RELIEF THE WORKMAN IS ENTITLED?”

As per the claim statement W-2, the workman has stated in brief that he was appointed on 01.04.1978 at Sitapur, as “Bharwahak” and was given the designation of Waterman, but he was assigned to perform other works as well at the Railway Station. He had worked continuously from 1978 to 1999. As per Railway Establishment Rules screening procedure should have been adopted after completion of 120 days’ service, however, in the after his screening the workman was sanctioned CPC (Time Scale) but without following the due procedure his services were terminated in 1999 while many other juniors to him were confirmed. On legal advice the application was moved before CAT, Lucknow through O.A. No. 523/2001 wherein the CAT, Lucknow directed the Ops to dispose off his representation within 3 months but this direction was not complied and the petition was again moved before CAT, Lucknow and another direction was given on 03.08.2007 that the application given by the workman should be disposed within 3 months after sympathetic consideration but again the opposite party did not decide the representation. The workman has further asserted that he was required to work through out the year and he was not a seasonal employee. After sanction of CPC scale, Railway Disciplinary and Appellate Rules have become applicable and before his termination the procedure of charge sheet and enquiry should have been adopted. The workman has emphasized that the un-authorized act of the opposite party is like retrenchment even then Retrenchment Rules were not followed. With the aforesaid pleadings the workman has requested to declare the termination/retrenchment order dated 19.07.1999 as illegal. He has requested for his reinstatement with all consequential benefits such as seniority etc.

3. The management while denying the allegations leveled in the claim statement had filed Written Statement M-7 wherein it has been pleaded that the workman was employed during the summer season only as Waterman to fetch the thirst of the passengers, the job was of temporary nature and he was required to provide the drinking water only during

the arrival and departure of passenger trains. The management has quoted Master Circular 20, para 5.1 and 9.4 and further letter dated 28.02.2001 has been mentioned. The management has asserted that the screening was not compulsory after completion of 120 days services rather it was to be followed on the basis of vacancy available.

4. The opposite party has further asserted that the workman was not covered under any so called screening and the workman was not provided temporary status and the railway was not required to absorb the workman as temporary or permanent employee. During the year 1999 he was temporarily assigned the work of waterman upto 19.07.99 only and later on in furtherance of amended rules the right to employ temporary waterman was abolished by the superior authorities and only General Manager was authorized to employ for the same. It was also decided to direct the departmental peons to perform the duty of waterman as well, and no waterman was employed since 2000. The opposite party has emphasized that with such misconception present petition has been filed with tilted facts. The management has requested to dismiss the claim statement.

5. The Opposite party has further stated that the seasonal watermen were appointed upto 19.7.99 only temporarily, later on in furtherance of amended rules the right to employ temporary watermen were abolished, only General Manager was authorized to make the appointment for the same. The workman was not entitled for screening test as per existing Rules and Departmental Disciplinary Rules and provisions were not stipulated on them neither no prior notice was required before their disengagement from service. The opposite party has emphasized that with such misconception present petition has been filed mentioning therein tilted facts. The management has further requested to dismiss the claim statement.

6. Rejoinder W-8 has been filed by the workman. Several documents as per W-9 has been filed by the workman. The management has filed several documents as per application/list M-10

7. The workman has filed his affidavit W-11 in the form of evidence. He has been thoroughly cross examined. Further certain documents have been filed by the workman as per list W-13.

8. The management has filed M-18 the affidavit of Sri Upendra Kumar Sharma he has been duly cross examined on behalf of the workman.

9. Arguments of both the parties have been heard at length. Record has been scanned thoroughly.

10. Main contention of the workman is that he had worked for more than 120 days, therefore he ought to have been given the benefit of screening and thereafter be treated as regularized, but the opposite party has not followed the departmental rules neither the principle of natural justice, and he was illegally retrenched w.e.f. 19.7.1999. The management while vehemently denying the allegations leveled in the claim statement, has emphasized that the petitioner was simply a seasonal worker, who was directed to perform the duty of waterman during the summer season and was never required to work for 120 days, he was not legally entitled for screening and for regularization. The opposite party has further asserted that since the petitioner was not granted the "Temporary Status" therefore he could not be given any consequential benefits.

11. Both the parties have admitted that the petitioner used to work as waterman under the control of the management authorities. In this regard certain documents are very important. Documents W9/5 issued by the Station Supdt. Shows that w.e.f. 1.4.89 to 31.7.89 and 1.4.90 to 15.7.90 the workman had worked, in the previous quarter for 122 days. Similarly another document W09/6 indicates that from 1.4.88 to 30.6.88 the workman had continuously worked and further in July 1989 he had worked for 31 days. Document W-9/7 certifies that the workman had worked w.e.f 1.4.86 to 7.8.96 as seasonal watermen, meaning thereby he had worked for more than 120 days in the said period. W-9/8 mention that from April 87 to July 87 the petitioner had worked for 122 days. Document W-9/9 refers to certificate given to the workman for having performed the duty of seasonal watermen w.e.f. 1.4.85 to 30.09.85 for 179 days. It reveals that he had worked upto **31.07.1985 for more than 120 days**. W-9/11 shows that he had worked from May 1979 to 25.09.79 for 144 days, i.e. for more than 120 days. The judgment delivered by CAT, Lucknow dated 17.09.2001 has also been referred by the workman.

12. The workman Sri D.R. Maurya has given specific evidence in support of his claim statement and document have also been filed to elaborate his version. In his cross examination no material contradiction came forward. The management witness Sri Upendra Kumar Sharma has also supported the pleas taken the written statement, but in his cross examination dated 22.12.2014 he has admitted the documents W-9/1-9/13, W-13/1-13/35. Document W-13/22 to 13/34 at sl.no.418 mentions that number of days forwarded by Supervisor pertaining to the workman, was 1602. It may also be taken into account that the petitioner was sanctioned amended pay scale Rs.196-232/ vide memo dated 10.2.1986(paper No. W-13/35) making it effective from 01.04.85.

13. Learned AR of the workman has relied upon the following pronouncements:

1. 1990 SCC (L&S) Union of India Vs Basant Lall page 611.
2. 2004(III) LLJ Union of India Vs Inshwar Jetha and others page 233 Hon'ble Gujrat High Court.

3. AIR Supreme Court Robert Disuza vs Executive Engineer Southern Railway page 854.
4. 2000(84) FLR, Supreme Court, page 3.

14. After having heard the intellect arguments of both the parties in the light of the evidence available on record, it is inferred that the consequential benefits after having worked for more than 140 days during the stipulated period, have not been provided by the management to the workman, neither departmental rules and principle of natural justice have been followed by the opposite party. The management ought to have looked into the documents maintained by its authorities and thereafter legal procedure for regularization or for providing temporary status to the workman should have been duly considered. In such circumstances it reflects that the termination order dated 19.7.99 or non-continuance of official duties assigned earlier to the workman, can not be treated as legal or justified. The workman is entitled for his reinstatement with all consequential benefits and promotions as per law. As reflected from document W-9/11, the workman had worked for more than 140 days in the period May 1979 to 25.09.79. Therefore the petitioner is entitled the benefit of "Temporary Status" as per Rules. Thereafter seniority and promotional benefits would also be given to him. However, sofar as issue of back wages is concerned, it seems appropriate and proper to award payment of 50% of the back wages to the workman, within 10 weeks, from the date of notification of the award, failing which the management shall be liable to pay interest @ 6% per annum.

15. Award as above.

LUCKNOW
29.03.2017

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 28 अप्रैल, 2017

का.आ. 1183.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर पूर्व रेलवे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 95/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28.04.2017 को प्राप्त हुआ था।

[सं. एल-41012/89/2010-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 28th April, 2017

S.O. 1183.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 95/2011) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the industrial dispute between the management of North Eastern Railway and their workmen, received by the Central Government on 28.04.2017.

[No. L-41012/89/2010-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

PRESENT : RAKESH KUMAR, Presiding Officer

I.D. No. 95/2011

Ref. No. L-41012/89/2010-IR (B-I) dated 12.05.2011

BETWEEN :

Sri Hira Lal Maurya
S/o Sri Ram Laut Maurya
R/o Village Baquarganj, PO : Panchpokhri
Distt. Sant Kabir Nagar (U.P.)

AND

The Divisional Railway Manager
North Eastern Railway,
Ashok Marg,
Lucknow (U.P.)

AWARD

1. By order No. L-41012/89/2010-IR(B-I) dated 12.05.2011 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between the Sri Hira Lal Maurya S/o Sri Ram Laut Maurya and the Divisional Railway Manager, North Eastern Railway, Lucknow for adjudication.

2. The reference under adjudication is:

“WHETHER THE ACTION OF THE MANAGEMENT OF NORTH EASTERN RAILWAY, LUCKNOW, IN TERMINATING THE SERVICES OF SRI HIRA LAL MAURYA S/O Sri RAM LAUT MAURYA, W.E.F. 19.7.1999 IS LEGAL AND JUSTIFIED? TO WHAT RELIEF THE WORKMAN IS ENTITLED?”

3. As per the claim statement W-2, the workman has stated in brief that he was appointed on 01.03.1977 at Manakpur Railway Station, as “Bharwahak” and was given the designation of Waterman, but he was assigned to perform other works as well at the Railway Station, he had worked at several Railway Stations viz. Khalilabad, Maghar, Gorakhpur and Lakhimpur Kheri etc. As per Railway Establishment Rules screening procedure should have been adopted after completion of 120 days’ service, however, in the after his screening the workman was sanctioned CPC (Time Scale) Rs.196-232/- w.e.f 01.04.1985 but without following the due procedure his services were terminated on 19.07.1999 while many other juniors to him were confirmed. On legal advice the application was moved before CAT, Lucknow through O.A. No. 523/2001 wherein the CAT, Lucknow directed the Ops to dispose off his representation within 3 months but this direction was not complied and the petition was again moved before CAT, Lucknow and another direction was given on 03.08.2007 that the application given by the workman should be disposed within 3 months after sympathetic consideration but again the opposite party did not decide the representation. The workman has further asserted that he was required to work through out the year and he was not a seasonal employee. After sanction of CPC scale, Railway Disciplinary and Appellate Rules have become applicable and before his termination the procedure of charge sheet and enquiry should have been adopted. The workman has emphasized that the un-authorized act of the opposite party is like retrenchment even then Retrenchment Rules were not followed. With the aforesaid pleadings the workman has requested to declare the termination/retrenchment order dated 19.07.1999 as illegal. He has requested for his reinstatement with all consequential benefits such as seniority etc.

4. The management while denying the allegations leveled in the claim statement had filed Written Statement M-8 wherein it has been pleaded that the workman was employed during the summer season only as Waterman to fetch the thirst of the passengers, the job was of temporary nature and he was required to provide the drinking water only during the arrival and departure of passenger trains. The management has quoted Master Circular 20, para 5.1 and 9.4 and further letter dated 28.02.2001 has been mentioned. The management has asserted that the screening was not compulsory after completion of 120 days services rather it was to be followed on the basis of vacancy available.

5. The opposite party has further asserted that the workman was not covered under any so called screening of the year 1985, rather he was sanctioned time scale on 01.04.1985, memorandum dated 26.02.1986 was issued and in such circumstances the so called screening of the year 1985 is beyond truth and the workman was not provided temporary status and the railway was not required to absorb the workman as temporary or permanent employee. O.A. No.523/2001 was filed by Sri Data Ram Maurya and the workman was not party to it and he had been informed regarding decision taken by the competent authority. During the year 1999 he was temporarily assigned the work of waterman upto 19.07.99 only and later on in furtherance of amended rules the right to employ temporary waterman was abolished by the superior authorities and only General Manager was authorized to employ for the same. It was also decided to direct the departmental peons to perform the duty of waterman as well, and no waterman was employed since 2000. The opposite party has emphasized that with such misconception present petition has been filed with tilted facts. The management has requested to dismiss the claim statement.

6. With strong denial of the facts mentioned in the written statement while reiterating the pleas in the claim statement, rejoinder W-9 has been filed by the workman. Several documents as per W-10 has been filed by the workman. The management has filed several documents as per application/list M-11.

7. The workman has adduced his evidence in the form of affidavit W-12, he has been thoroughly cross examined on behalf of the management.

8. Later on certain documents have been filed by workman as per W-15. The workman re-examined himself on oath and was further cross examined.

9. The opposite party has filed affidavit of Sri Upendra Kumar Sharma M-19, he has been duly cross examined on behalf of the workman.

10. Arguments of both the parties have been heard at length. Record has been scanned thoroughly.

11. Main contention of the workman is that he had worked for more than 120 days, therefore he ought to have been given the benefit of screening and thereafter be treated as regularized, but the opposite party has not followed the departmental rules neither the principle of natural justice, and he was illegally retrenched w.e.f. 19.7.1999. The management while vehemently denying the allegations leveled in the claim statement, has emphasized that the petitioner was simply a seasonal worker, who was directed to perform the duty of waterman during the summer season and was never required to work for 120 days, he was not legally entitled for screening and for regularization. The opposite party has further asserted that since the petitioner was not granted the "Temporary Status" therefore he could not be given any consequential benefits.

12. Both the parties have admitted that the petitioner used to work as waterman under the control of the management authorities. In this regard certain documents are very important. Documents W10/11 issued by the Railway Authorities shows that w.e.f. 1.4.86 to 31.7.86; w.e.f. 1.4.87 to 31.07.87 and w.e.f. 1.8.88 to 31.7.88 the workman had worked for more than 120 days in the period ranging from 21.3.82 to 20.8.82, 10.5.84 to 15.9.84 and 9.4.85 to 30.9.85, Period shown w.e.f. 01.03.77 to 22.05.1980, is vague

13. The workman Sri Hira Lal Maurya has given specific evidence in support of his claim statement and document have also been filed to elaborate his version. In his cross examination no material contradiction came forward. The management witness Sri Upendra Kumar Sharma has also supported the pleas taken the written statement, but in his cross examination dated 22.12.2014 he has admitted the varacity of the paper filed as per list W-10 and W-15, as referred hereinabove. The management witness has specifically asserted on page 1 of the cross examination that the documents 10/7 to 10/12 have been issued by several Railway Authorities, similar version has been given regarding 15/22 to 15/33 and 10/2 to 10/6. It may be quite pertinent to mention here that on page no.12 of the document W-15/22, 15/33, it has been shown that the petitioner Sri Hira Lal Maurya had worked for 1411 days, which has been verified by the Supervisor/Observor. It may also be taken into account that the petitioner was sanctioned time scale by the railway authorities as per memo dated 26.02.1986, making it effective from 01.04.1985. The reason for so called retrenchment or discontinuance of the duties assigned to the petitioner has not been elaborately explained by the management. The Master Circular has not perhaps been sincerely and honestly followed by the management. It is also material fact that the documents relied upon by the petitioner, have no where been claimed by the management as forged or fabricated. Moreover, no other concrete and cogent documentary evidence in reply to the workman's version has been submitted by the opposite party in this court.

14. Learned AR of the workman has relied upon the following pronouncements:

1. 1990 SCC (L&S) Union of India Vs Basant Lal page 611
2. 2004(III) LLJ Union of India Vs Inshwar Jetha and others page 233 Hon'ble Gujrat High Court.
3. AIR Supreme Court Robert Disuza vs Executive Engineer Southern Railway page 854
4. 2000(84) FLR, Supreme Court, page 3.

15. After having heard the intellect arguments of both the parties in the light of the evidence available on record, it is inferred that the consequential benefits after having worked for more than 120 days during the stipulated period, have not been provided by the management to the workman, neither departmental rules and principle of natural justice have been followed by the opposite party.

16. The management ought to have looked into the documents maintained by its authorities and thereafter legal procedure for regularization or for providing temporary status to the workman should have been duly considered. In such circumstances it reflects that the termination order dated 19.7.99 or non- continuance of official duties assigned earlier to the workman, can not be treated as legal or justified. The workman is entitled for his reinstatement with all consequential benefits and promotions as per law. As reflected from document W-10/12, the workman had worked for more than 150 days in the period 21.03.82 to 20.08.82. Therefore the petitioner is entitled the benefit of "Temporary Status" as per Rules. Thereafter seniority and promotional benefits would also be given to him. However, sofar as issue of back wages is concerned, it seems appropriate and proper to award payment of 50% of the back wages to the workman, within 10 weeks, from the date of notification of the award, failing which the management shall be liable to pay interest @ 6% per annum.

17. Award as above.

LUCKNOW
29.03.2017

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 1 मई, 2017

का.आ. 1184.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ बड़ौदा के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक न्यायालय (केन्द्रीय), कोटा (राजस्थान) के पंचाट (संदर्भ सं. 6/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 01.05.2017 को प्राप्त हुआ था।

[सं. एल-12011/05/1995-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 1st May, 2017

S.O. 1184.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 6/1999) of the Industrial Court (Central), Kota (Raj.) as shown in the Annexure, in the Industrial Dispute between the management of Bank of Baroda and their workmen, received by the Central Government on 01.05.2017.

[No. L-12011/05/1995-IR (B-II)]

RAVI KUMAR, Desk Officer

अनुबंध

न्यायाधीश, औद्योगिक न्यायाधिकरण (केन्द्रीय) कोटा, (राज.)

पीठासीन अधिकारी— श्री जगमोहन शर्मा, आर.एच.जे.एस.

निर्देश प्रकरण क्रमांक:औ.न्या.(केन्द्रीय)-6/1999

दिनांक स्थापित : 23/3/99

प्रसंग : भारत सरकार, श्रम मंत्रालय, नई दिल्ली के आदेश

कं. एल-12011/05/95-आईआर(बी-II) दि. 8/3/99

निर्देश/विवाद अन्तर्गत धारा 10(1)(घ) एवं उपधारा 2(क) औद्योगिक विवाद अधिनियम, 1947

मध्य

1-आनन्दी लाल माली पुत्र भंवरलाल एवं

2-सीताराम नामा पुत्र किशनलाल नामा द्वारा सेक्रेट्री बैंक आफ बड़ौदा कर्मचारी यूनियन, कोटा।

—प्रार्थीगण श्रमिक

एवं

मैनेजर, बैंक आफ बड़ौदा, रीजनल ओफिस, रीजनल ओफिस

श्रीजी भवन, झालावाड़ रोड़, कोटा।

—अप्रार्थी नियोजक

उपस्थित

प्रार्थीगण श्रमिक की ओर से प्रतिनिधि :

श्री पुरुषोत्तम दाधीच

अप्रार्थी नियोजक की ओर से प्रतिनिधि :

श्री सुरेश माथुर

अधिनिर्णय दिनांक: 10/2/2017

::अधिनिर्णय::

भारत सरकार, श्रम मंत्रालय, नई दिल्ली के प्रासांगिक आदेश दिनांक 8/3/99 के जरिये निम्न निर्देश विवाद, औद्योगिक विवाद अधिनियम, 1947 (जिसे तदुपरान्त "अधिनियम" से सम्बोधित किया जावेगा) की धारा 10(1)(घ) एवं उपधारा 2(क)के अन्तर्गत इस न्यायाधिकरण को अधिनिर्णयार्थ सम्प्रेषित किया गया है:—

"Whether the action of the management of Bank of Baroda is justified in terminating the services of Sh. Anandi Lal Mali S/o Sh. Bhanwar Lal Mali and Sita

Ram and making fresh recruitment against the post of Sub-Staff without considering their claim for regularisation in the bank's services? If not, what relief is the disputant entitled to?"

2— निर्देश/विवाद, न्यायाधिकरण में प्राप्त होने पर पंजीबद्ध उपरान्त पक्षकारों को सूचना/नोटिस जारी कर विधिवत अवगत करवाया गया।

3— हस्तगत प्रकरण 2 प्रार्थीगण श्रमिक आनन्दी लाल माली व सीताराम के सेवा पृथक्करण के मामले में प्राप्त हुआ है, किन्तु दोनों प्रार्थीगण द्वारा अपने क्लेम स्टेटमेन्ट पृथक्-पृथक् रूप से प्रस्तुत किये गये हैं। प्रार्थी श्रमिक आनन्दीलाल माली द्वारा अपने क्लेम स्टेटमेन्ट में व्यक्त किया गया है कि उसे अप्रार्थी नियोजक मैनेजर, बैंक आफ बड़ौदा, रीजनल ओफिस, कोटा द्वारा दि.21/5/85 से अधीनस्थ कर्मचारी के पद पर दैनिक वेतन पर सेवामें नियोजित किया गया था, तब से लेकर 9/4/94 तक निरन्तर कार्य करते हुए 240 दिन से भी अधिक समय तक कार्य पूर्ण कर लिया गया था, तथापि उसे बिना किसी कारण व पूर्व सूचना के अधिनियम की धारा 25-एफ एवं अन्य आज्ञापक प्रावधानों की पालना किये बगैर दि.11/4/94 से अवैध रूप से छंटनी करके नौकरी से हटा दिया गया। अन्त में प्रार्थना की गयी है कि प्रार्थी श्रमिक, अप्रार्थी के यहाँ पिछले सम्पूर्ण वेतन, लाभों सहित सेवामें बहाल होने का अधिकारी है जो अनुतोष उसे प्रदान किया जावे।

4— दूसरे प्रार्थी श्रमिक सीताराम ने भी अपने क्लेम स्टेटमेन्ट में उक्त अप्रार्थी नियोजक द्वारा दि.2/5/82 से बैंक करवर शाखा में च.श्रे. कर्मचारी के पद पर सेवामें नियोजित करना व 10/4/94 तक 240 दिन से भी अधिक समय तक निरन्तर कार्य करना कथन करते हुए उसे बिना किसी कारण व पूर्व सूचना के अधिनियम की धारा 25-एफ व अन्य आज्ञापक प्रावधानों की पालना किये बगैर दि.11/4/94 से अवैध रूप से छंटनी करके नौकरी से हटाना व्यक्त किया है। अन्त में प्रार्थना की गयी है कि प्रार्थी श्रमिक, अप्रार्थी के यहाँ पिछले सम्पूर्ण वेतन, लाभों सहित सेवामें बहाल होने का अधिकारी है जो अनुतोष उसे प्रदान किया जावे।

5— उपरोक्त दोनों प्रार्थीगण श्रमिक के क्लेम स्टेटमेन्ट्स का जवाब प्रस्तुत करते हुए अप्रार्थी की ओर से व्यक्त किया गया है कि प्रार्थी आनन्दीलाल ने अप्रार्थी बैंक में दैनिक वेतन पर कार्य किया है जो सुबह प्रारम्भ होकर शाम को समाप्त हो जाता है। प्रार्थी आनन्दीलाल ने कभी एक वर्ष में निरन्तर 240 दिन कार्य नहीं किया, अतः वह अधिनियमान्तर्गत अप्रार्थी से कोई अनुतोष का अधिकारी नहीं है। दूसरे प्रार्थी सीताराम के सम्बन्ध में पृथक् जवाब में कथन किया है कि उसे अप्रार्थी बैंक करवर शाखा में दि.2/5/82 से कभी च.श्रे.कर्मचारी के पद पर कार्य पर नहीं रखा गया व ना ही प्रार्थी ने उक्त पद पर नियोजित होकर कार्य किया, ऐसी स्थिति में उसे 10/4/94 से अप्रार्थी द्वारा सेवा से हटाये जाने का कोई प्रश्न ही उत्पन्न नहीं होता तथा जब प्रार्थी सीताराम को उनके द्वारा सेवा में नियोजित अथवा सेवा से हटाया ही नहीं किया गया तो ऐसी स्थिति अधिनियम के किसी प्रावधान की पालना किया जाना भी आज्ञापक नहीं रहा। अतः दोनों प्रार्थीगण श्रमिक अप्रार्थी से किसी प्रकार के अनुतोष के अधिकारी नहीं हैं, क्लेम प्रार्थीगण अस्वीकार कर निरस्त किये जावें।

6— साक्ष्य में प्रार्थी श्रमिक आनन्दीलाल माली व सीताराम नामा के शपथ-पत्र तथा अप्रार्थी पक्ष की ओर से ओमप्रकाश खण्डेवाल, रमेशचन्द्र टेलर, संतोषकुमार जैन तथा चांदमल नामा शाखा प्रबन्धकों के शपथ-पत्र प्रस्तुत हुए जिनसे दोनों पक्षों के प्रतिनिधिगण द्वारा एक-दूसरे पक्षों के शपथ-पत्रों पर जिरह की गयी। प्रार्थी पक्ष की ओर से प्रलेखीय साक्ष्य भी प्रस्तुत की गयी।

7— प्रकरण बहस अन्तिम के प्रक्रम पर था कि दि.8/10/14 को प्रार्थीया की ओर से प्रकट किया गया कि रेफ्रेन्स में संशोधन की कार्यवाही की हुई है, शुद्धिपत्र का इन्तजार किया जावे, अतः पत्रावली इन्तजार शुद्धिपत्र में आगामी दि.28/1/15 से लेकर आज दिनांक 10/2/77 तक प्रार्थी पक्ष की ओर से कई अवसर लिये जाने के उपरान्त भी ना तो ऐसी कार्यवाही किये जाने का कोई प्रलेख प्रस्तुत किया गया व ना ही कोई शुद्धिपत्र पेश नहीं किया गया। रेफ्रेन्स मार्च, 1999 में प्राप्त होने के उपरान्त आज दिन तक लगभग 17 वर्ष से भी ऊपर का समय हो चुका है तथा लगभग सवा दो वर्ष का समय शुद्धिपत्र के इन्तजार में ही व्यतीत हो चुका है, यदि प्रार्थीगण चाहते तो इतनी अवधि में तो आसानी से रेफ्रेन्स में संशोधन करवा शुद्धिपत्र न्यायाधिकरण में पेश कर सकते थे। अतः अब बार-बार इसी कारण से स्थगन दिया जाना भी उचित प्रतीत नहीं होता एवं कालान्तर में यदि रेफ्रेन्स में कोई संशोधन-पत्र प्राप्त होता है तो उसी अनुरूप मामले के गुणावगुण के आधार पर विनिश्चय भी किया जा सकता है। अतः प्रार्थीगण की प्रार्थना, और स्थगन दिये जाने की अस्वीकार की गयी।

8— विद्वान प्रतिनिधिगण पक्षकारान की बहस अन्तिम सुनी गयी व पत्रावली का अवलोकन किया गया। दौरान बहस न्यायाधिकरण के समक्ष यह तथ्य जानकारी में आया है कि सम्प्रेषित निर्देश/रेफ्रेन्स में अप्रार्थी नियोजक द्वारा प्रार्थीगण श्रमिक को कब सेवा से मुक्त/पृथक् किया गया, इस तिथि का कोई उल्लेख नहीं है। अतः यह स्थिति स्पष्ट नहीं है कि यह न्यायाधिकरण अप्रार्थी द्वारा प्रार्थीगण श्रमिक की कौनसी तिथि, सेवा पृथक् तिथि मानकर अप्रार्थी के कृत्य की उचितता एवं वैधता का विनिश्चय करेगा? इस सम्बन्ध में माननीय राज. उच्च न्यायालय द्वारा पारित न्यायदृष्टांत "2003 डबल्यू.एल.सी.(राज.) यू.सी. पृष्ठ 424— महावीर कण्डक्टर बनाम नन्दकिशोर" में यह प्रतिपादित किया गया है कि सेवाओं के पर्यवसान की तिथि का रेफ्रेन्स में उल्लेख नहीं होने से श्रम न्यायालय किसी कर्मकार के कथनानुसार पर्यवसान की तिथि को स्वीकार कर निर्देश/रेफ्रेन्स की शर्तों में सुधार, संशोधन या उपात्तरण करने में सक्षम नहीं है एवं ना ही न्यायालय को पक्षकारों की सहमति से ऐसी अधिकारिता प्राप्त होती है। अतः माननीय उच्च न्यायालय द्वारा निर्देश/रेफ्रेन्स में कर्मकार की सेवा पर्यवसान की तिथि वर्णित नहीं होने से अधिनिर्णय को अपास्त कर दिया गया। इस उक्त न्यायनिर्णय में प्रतिपादित सिद्धांत के अनुसार जहाँ निर्देश/रेफ्रेन्स में सेवा से हटाने, मुक्त करने या पृथक् करने की तिथि का अंकन नहीं है तो श्रम न्यायालय को उस तिथि को सही करने या संशोधन करने की अधिकारिता पक्षकारों द्वारा ऐसी तिथि सुझावित किये जाने पर भी प्राप्त नहीं हो जाती है। अर्थात् यदि निर्देश में सेवा से मुक्ति, पृथक् या हटाने की तिथि का कोई अंकन नहीं है व दोनों ही पक्षकार ऐसी तिथि यदि बता भी देते हों तो भी श्रम न्यायालय को

उस बतायी गयी तिथि को मानकर उसके आधार पर निर्देश/रेफ्रेन्स उत्तरित करने का अधिकार प्राप्त नहीं हो जाता है। इस न्यायनिर्णय के पेरा सं.11 में माननीय उच्चतम न्यायालय द्वारा "मदनपालसिंह बनाम उत्तरप्रदेश राज्य व अन्य-एआईआर 2000 एस.सी. 537" के निर्णय को विवेचित किया गया है तथा अन्त में यह निष्कर्ष निकाला गया कि श्रम न्यायालय निर्देश में वर्णित बिन्दुओं तक ही सीमित क्षेत्राधिकार रखता है एवं उसको पक्षकारों के नामों में निर्देश से परे जाकर संशोधन आदि का अधिकार प्राप्त नहीं होता। यदि नामों या तिथि आदि में कोई परिवर्तन या अंकन कराना है तो पक्षकारों को समुचित सरकार के समक्ष इस बाबत पक्ष रखकर उसमें संशोधन कराना होगा, परन्तु श्रम न्यायालय को ऐसा संशोधन करने की अधिकारिता नहीं है। अतः इसी निर्णय को आधार मानते हुए माननीय उच्च न्यायालय द्वारा उक्त मामले में श्रम न्यायालय द्वारा पारित अधिनियम को क्षेत्राधिकार के अभाव का मानते हुए अपास्त कर दिया गया।

9— अब यह न्यायाधिकरण हस्तगत निर्देश/रेफ्रेन्स में प्रार्थीगण श्रमिक को अप्रार्थी नियोजक द्वारा कौनसी तिथि, सेवा से पृथक किये जाने की तिथि मानकर अप्रार्थी के उक्त कृत्य की उचितता एवं वैधता का विनिश्चय करेगा तथा क्या यह न्यायाधिकरण पक्षकारों द्वारा सुझायी गयी तिथि मानकर प्रकरण का गुणावगुण पर विनिश्चय कर सकता है अथवा निर्देश/रेफ्रेन्स में संशोधन करने की अधिकारिता रखता है? इस सम्बन्ध में माननीय राजस्थान उच्च न्यायालय द्वारा पारित उक्त न्यायदृष्टांत "2003 डबल्यू.एल.सी.(राज.) यू.सी. पृष्ठ 424—महावीर कण्डक्टर बनाम नन्दकिशोर" के पेरा संख्या 12 का उल्लेख किया जाना न्यायसंगत है जिसमें माननीय उच्च न्यायालय द्वारा रेफ्रेन्स के निबन्धन या सेवा समाप्ति तिथि में संशोधन आदि बाबत निम्न स्थिति प्रकट की गयी है:-

"Thus, in view of the above, I reach the inescapable conclusion that the Labour Court has no competence to correct/modify/amend /alter the terms of the reference or mention the date of termination etc., or proceed with the reference and accepting the date of termination as suggested by the workman and in case it does so, the award becomes nullity, being without jurisdiction, based on the bad reference."

10— अतः माननीय राज. उच्च न्यायालय द्वारा पारित उपरोक्त न्यायदृष्टांत के प्रकाश में हस्तगत मामले में यह न्यायाधिकरण पक्षकारों द्वारा सुझायी गयी तिथि/नाम आदि को संशोधित तिथि/नाम मानकर प्रकरण को गुणावगुण पर निस्तारित किये जाने की अधिकारिता नहीं रखता है। इस प्रकार माननीय उच्चतम एवं माननीय उच्च न्यायालय द्वारा ऊपर विवेचित किये गये न्यायनिर्णयों में प्रतिपादित सिद्धांतों के अनुसार हस्तगत प्रकरण में इस न्यायाधिकरण को ऐसे पक्षकारों का संशोधन प्रस्ताव स्वीकार किये जाने की अधिकारिता नहीं होने से इस न्यायाधिकरण की राय में यह न्यायाधिकरण यदि कोई अधिनियम पारित भी करता है तो वह क्षेत्राधिकार के अभाव का होकर शून्य होगा। इन न्यायनिर्णयों के खण्डन में या अन्य कोई न्यायनिर्णय ऐसा पेश भी नहीं किया गया जिसमें कि ऊपर वर्णित स्थिति होने के बावजूद भी न्यायाधिकरण को निर्देश अधिनियमित करने का अधिकार प्राप्त हो। अतः कुल मिलाकर स्थिति उक्त न्यायनिर्णयों के ही अभी तक प्रभावशील होने की पायी जाती है। माननीय उच्च न्यायालय एवं माननीय उच्चतम न्यायालय द्वारा पारित उक्त न्यायनिर्णयों में प्रतिपादित सिद्धांतों से यह न्यायाधिकरण आबद्ध है। अतः ऐसी परिस्थिति में सम्पूर्ण विवेचन के उपरान्त इस न्यायाधिकरण की राय में इतना ही कहना पर्याप्त है कि हस्तगत निर्देश/रेफ्रेन्स में प्रार्थीगण श्रमिक को अप्रार्थी नियोजक द्वारा कौनसी तिथि से सेवा पृथक किया गया है, ऐसी तिथि का कोई अंकन नहीं होने से यह न्यायाधिकरण ऐसे निर्देश में कोई संशोधन कर अधिनियम पारित करने की अधिकारिता नहीं रखता है एवं यदि पक्षकार सक्षम सरकार से इस बाबत निर्देश/ रेफ्रेन्स में संशोधन कराकर न्यायाधिकरण में पेश करते हैं तो न्यायाधिकरण ऐसा संशोधन प्राप्त होने पर प्रकरण में विधि अनुसार कार्यवाही कर सकेगा, परन्तु इस प्रक्रम पर फिलहाल यह मामला इस न्यायाधिकरण के क्षेत्राधिकार के अभाव का पाया जाता है।

परिणामस्वरूप भारत सरकार, श्रम मंत्रालय, नई दिल्ली द्वारा प्रासांगिक आदेश दिनांक 8/3/1999 के जरिये सम्प्रेषित निर्देश/रेफ्रेन्स विवाद को इसी अनुरूप उत्तरित किया जाता है कि माननीय राजस्थान उच्च न्यायालय द्वारा पारित उक्त न्यायदृष्टांत "2003 डबल्यू.एल.सी.(राज.) यू.सी. पृष्ठ 424—महावीर कण्डक्टर बनाम नन्दकिशोर" में प्रतिपादित सिद्धांत के अनुसरण में हस्तगत निर्देश/रेफ्रेन्स में वर्णित प्रार्थीगण श्रमिक आनन्दीलाल माली व सीताराम को अप्रार्थी नियोजक द्वारा कौनसी तिथि को सेवा से पृथक किया गया है, ऐसी तिथि का कोई अंकन नहीं होने से व इस न्यायाधिकरण को पक्षकारों द्वारा सुझायी गयी तिथि को स्वीकार किये जाने की अधिकारिता नहीं होने से हस्तगत निर्देश/रेफ्रेन्स में अधिनियम पारित किया जाना शून्य एवं क्षेत्राधिकार के अभाव का होगा। पक्षकार यदि सक्षम सरकार से उक्त तिथि बाबत निर्देश/रेफ्रेन्स में संशोधन/अंकन कराकर न्यायाधिकरण के समक्ष पेश करेंगे तो न्यायाधिकरण गुणावगुण के आधार पर विधि अनुसार आगे प्रकरण के निस्तारण की कार्यवाही कर सकेगा।

जगमोहन शर्मा, न्यायाधीश

नई दिल्ली, 1 मई, 2017

का.आ. 1185.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ महाराष्ट्र के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, बंगलौर के पंचाट (संदर्भ सं. 36/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 01.05.2017 को प्राप्त हुआ था।

[सं. एल-12011/15/2012-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 1st May, 2017

S.O. 1185.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 36/2012) of the Central Government Industrial Tribunal-cum-Labour Court, Bangalore as shown in the Annexure in the Industrial Dispute between the management of Bank of Maharashtra and their workmen, received by the Central Government on 01.05.2017.

[No. L-12011/15/2012-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 28th MARCH, 2017

PRESENT : Shri V. S. RAVI, Presiding Officer

C R No. 36/2012

I Party

The General Secretary,
Bank of Maharashtra Employees Unit,
45-47, Mumbai Samchar Marg,
Mumbai-400023

(By Mr. Muralidhara, Advocate)

II Party

The Regional Manager,
Bank of Maharashtra, Bangalore Region
15, Police Station Road, Basavangudi,
Bangalore

(By Mr. Ramesh Upadhyaya, Advocate)

AWARD

1. The Central Government vide Order No.L-12011/15/2012-IR(B-II) dated 03.08.2012 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Dispute act, 1947 has made this reference for adjudication with following Schedule :

SCHEDULE

“Whether the action of management of Bank of Maharashtra is justified in violating the 9th Bipartite Industrial Settlement dated 27.04.2010 in respect of entrustment of duties of Head Cashier-II? What relief the BEMU is entitled to?”

2. Brief details mentioned in the Claim Statement are as follows:-

The I Party/Union is a trade union of workmen employed in the II Party/Bank and it is a registered body under the Trade Unions Act, 1926. The Management of the II Party /Bank and the I Party/Union, being signatories to the settlements, are bound by the terms of the settlements. It is submitted that 9th Bipartite Industry level settlement has been signed on 27.04.2010 under section 18(1) of the Industrial Dispute Act, 1947 between the IBA and the Bank Employees Federation. However, the II Party/Management in the Circular dated 27.01.2011 has inserted new clauses imposing duties in addition to the duties of Single Window Operator-A&B. The comparison between the duties of Head Cashier-II as defined in the IX Bipartite Settlement and as enumerated in the Management Circular dated 27.01.2011 would clearly show that the Management has imposed additional duties on Head Cashier-II. The II Party/Management has not discussed with the representatives of the I Party/Union with regard to imposing additional duties on Head Cashier-II. In view of the divergent positions between the parties, the conciliation ended in failure and resulted in the present order of reference. Therefore, the I Party/Union respectfully prays that this Court may be pleased to pass an Award

- a) By holding that the action of the II Party/Management is in violation of the 9th Bipartite Industrial Settlement dated 27.04.2010 in respect of entrustment of duties of Head Cashier-II.
- b) And to direct the II Party/Management to entrust duties to the Head Cashier-II as per the 9th Bipartite Settlement.

3. Brief details mentioned in the counter statement are as follows:-

The II Party submits that Bank of Maharashtra, a public Sector Bank, is a member of Indian Bank's Association. Accordingly a Memorandum of Settlement dated 27.04.2010 has been signed between Indian Banks Association which represented the Managements of 46 Banks and their workmen staff as represented by All India Bank Employees Association and other Federations of Trade Unions, under section 2(p) and section 18(1) of the Industrial Disputes Act,

1947 read with Rule 58 of the Industrial Disputes (Central) Rules, 1957. The Memorandum of Settlement dated 27.04.2010 has clearly defined the duties of all the three special allowance categories. The same is because, allocation of special allowance duties is not a matter of right of the employee and it is for the management to decide to whom to allocate special allowance duties depending upon the suitability of the employee. It is submitted that the duties of clerical staff with effect from 01.05.2010 are enumerated under part C of the Schedule II of the MOS dated 27.04.2010. It is also clarified that the workmen entrusted with duties attracting special pay can be required to perform routine duties of his cadre. It is also submitted that the special pay prescribed is intended to compensate a workman for performance or discharge of certain additional duties and functions requiring greater skill or responsibility over and above the routine duties and functions of a workman in the same cadre. It is submitted that in terms of Clause IX (1) (b) of MOS dated 31.10.1979, entrustment of duties attracting special allowance/pay will not amount to granting an additional designation. It is submitted that as per the MOS dated 27.04.2010, if there is any difference of opinion regarding interpretation of any of the provision of the said Settlement the matter will be taken up by the Federations only at the level of the Indian Banks Association for discussion and settlement. However, the affiliates of All India Bank Employees Association preferred to make representations before the various Government Authorities, which is in contravention of the MOS dated 27.04.2010 and as such the present Reference is liable to be dismissed for want of jurisdiction. The Special pay duties do not include the routine duties of the clerical cadre which a workman has to normally perform, but merely refer to those special allowance/pay duties which, if performed, in addition to the routine duties, will entitle a workman to a special pay on the terms and conditions provided in Chapter V of the 1st Bipartite Settlement as modified. Thus, the provisions of Bipartite Settlement dated 27.01.2010 makes it amply clear that the workmen performing the special pay duties have to perform other routine cadre duties also. Clause 22 (ii) of BPS dated 31.10.1979 provides that an employee performing duties attracting special allowances on a regular basis will be entitled to receive the special allowance at the highest rate applicable to him. The same clearly means that the employee, depending upon the requirement of the Bank, can be asked to perform allowance and non-allowance duties and multiple allowance duties also. Clause 1 (iii) (b) of BPS dated 31.10.1979 provides that entrustment of duties attracting special allowance will not amount to granting an additional designation. It is further submitted that a work of Head Cashier II is a special pay carrying work and the person entrusted with the duties of Head Cashier II will have to perform the clerical cadre duties i.e., duties of Single Window Operator 'A' and also duties of Head Cashier II. Therefore, the I Party Union is not entitled to claim any reliefs and the present reference is not maintainable.

4. The pertinent point that arises for consideration in the present matter is:-

“Whether the action of management of Bank of Maharashtra is justified in violating the 9th Bipartite Industrial Settlement dated 27.04.2010 in respect of entrustment of duties of Head Cashier-II? And to what relief the BEMU is entitled to?”

5. Analysis, Discussion Findings with regard to the above mentioned point:-

On behalf of II Party, MW-1 Manager of II Party, has been examined and Ex M-1 to Ex M-3 marked. MW-1, has categorically stated in his evidence that the special pay prescribed is intended to compensate a workman for performance or discharge of certain additional duties and functions requiring greater skill or responsibility over and above the routine duties and functions of a workman in the same cadre and in order to be entitled to a special pay, such additional duties and functions should constitute the normal part of the duties and functions performed or discharged by a workman. Further, an employee can be called upon to perform duties attracting more than two special pays and he shall be entitled to receive the special allowance/pay at the highest rate which is applicable and this is evident from First Bi-partite Settlement dated 19.10.1996, which provides that “..... Where a workman falls within more than one category, he shall, be entitled to receive the special allowance at the highest rate applicable to him,” and in terms of Clause IX (1)(b) of MOS dated 31.10.1979, entrustment of duties attracting special allowance/pay will not amount to granting an additional designation.

6. Also, MW-1 has distinctly pointed out that, as per Clause IX (22)(i) of MOS dated 31.10.1979 an employee performing duties attracting special allowance on a regular basis will be entitled to receive the special allowance at the highest rate applicable to him. Use of the word “highest” clearly means that a workman can be entrusted with duties attracting more than two special pays and the disputant Union has conspicuously concealed the above and other relevant provisions of Bipartite Settlement from the Hon’ble Tribunal and thus, the bank has rightly implemented the provisions of Bipartite Settlement and issued Circular No. AX1/ST/IRC/Cir.09/2011 dated 27.01.2011, in the matter of duties of Head Cashier II. Also, it is denied by MW-1, specifically that any additional duties have been imposed on Head Cashier II and the relevant provisions of IX Bipartite Settlement dated 27.04.2010 are not violated and in such circumstances, the I Party Union is not entitled to claim any relief and II Party Bank has entrusted the duties to Head Cashiers as per the provisions of the settlements and hence there is no ground to give direction as sought by the Union and the present Reference is liable to be rejected and through the circular dated 27.01.2011 added and additional responsibilities on Head Cashier-II, in addition to what is provided in the settlement, has not been given and the claim of the I Party is not correct. In order to establish the said details, the MW-1 has submitted the Ex M-1, relating to IX

Bipartite Settlement, dated 22.07.2010 and also, Ex M-2, Memorandum of Settlement dated 27.04.2010 and the Ex M-3, Letter dated 27.01.2011 relating to entrustment of duties of Head Cashier II and other allowance carrying duties as per IXth Bipartite Settlement and other industry level Bipartite Settlement/awards. Further, the MW-1 has also clearly established that the various statements made in the counter, as valid and I Party is not entitled to get any relief as prayed for in the claim statement. Further, in the claim statement the I Party/Union has prayed to hold that the action of the II Party/Management is in violation of the 9th Bipartite Industrial Settlement dated 27.04.2010 in respect of entrustment of duties of Head Cashier-II and also, to direct the II Party/Management to entrust duties to the Head Cashier-II as per the 9th Bipartite Settlement. However, in order to establish the said claim made by the I Party/Union, the I Party/Union has not submitted any relevant evidence or material records in favour of I Party/Union. On other hand, the II Party/Management has produced relevant evidence and material Exhibits and also established that no additional responsibility has been given to Head Cashier-II as mentioned in the claim statement.

7. Further, in the above mentioned facts and circumstances, it is found that the I Party/Union has failed to establish that the I Party/Union is entitled to get above mentioned reliefs. On the other hand, the II Party/Management has clearly established that the I Party is not entitled to get any relief, for the above mentioned factual reasons and also, legal grounds. Accordingly, the following award is passed.

AWARD

There is no ground to hold that, the action of the Management of Bank of Maharashtra is in violation of the 9th Bipartite Industrial Settlement dated 27.04.2010, in respect of entrustment of duties of Head Cashier-II and hence, there is no ground to give direction as prayed for by the I Party Union in the claim statement and the reference is answered accordingly, without cost for the above mentioned peculiar facts and special circumstances.

Dictated, transcribed, corrected and signed by me on 28th March, 2017)

V. S. RAVI, Presiding Officer

List of Witness on the side of II Party:

MW1	Sh. Radhakrishnan, II Party/ Manager
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Exhibit marked on behalf of II Party:

Exhibits	Date	Description of Document
Ex M-1	22.07.2010	IX Bi-partite Settlement
Ex M-2	27.04.2010	Memorandum of Settlement
Ex M-3	27.01.2011	Circular by II Party/Management

नई दिल्ली, 1 मई, 2017

का.आ. 1186.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इलाहाबाद बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 57/14) को प्रकाशित करती है जो केन्द्रीय सरकार को 01.05.2017 को प्राप्त हुआ था।

[सं. एल-12012/30/2014-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 1st May, 2017

S.O. 1186.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 57/14) of the Central Government Industrial Tribunal-cum-Labour

Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the management of Allahabad Bank and their workmen, received by the Central Government on 01.05.2017.

[No. L-12012/30/2014-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/57/14

Shri Jagdish Prasad Kandare,
C/o Nandlal Kandare, Near Balaji Mandir,
C/o Ramsingh Contractor, Itarsi,
Distt. Hoshangabad (MP)

...Workman

Versus

Regional Manager,
Allahabad Bank,
Nodal Divisional Office Complex,
“C” Block, Gautam Nagar,
Bhopal

...Management

AWARD

Passed on this 1st day of March 2017

1. As per letter dated 30-6-14 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No. L-12012/30/2014-IR(B-II). The dispute under reference relates to:

“Whether the action of the management of Allahabad Bank (Regional Manager, Allahabad Bank, Bhopal) in terminating the services of workman Shri Jagdish Prasad Kandare w.e.f. 2006 is justified? What relief the workman is entitled to?”

2. After receiving reference, notices were issued to the parties. Workman submitted statement of claim. Case of workman s that on 25-6-96, he was appointed in Itarsi branch as sweeper in pay of Rs.400/- per month. His appointment was made after fulfilling the requirements. He reported on duty on 1-7-96. He was regularly performing his duty, pay slips were issued to him in the year 1996, 1998, 2003. He was continuously working from 1996 to 2004 about 7 years. Thereafter workman fell ill and thereafter workman fell ill and there were also family disputes, as such he remained absent. Application was submitted along with medical certificate. Showcause notice was issued to him. Workman had replied showcause notice along with medical certificate. He was stopped from work. Workman was asked to contact Regional Office, Bhopal. Workman submitted representation dated 7-10-01, 8-10-04, 27-10-04. He contacted Bank many times. Regional Office not given any officer neither terminated his services. That workman was appointed on post of sweeper. He was stopped from work without any reason. He was not paid compensation/ salary, his services were terminated without any reasons after his completing 7-8 years service. On such ground, workman prays for his reinstatement with backwages.

3. 2nd party despite notice dated 7-5-15, 3-8-15, 29-9-15, 4-5-16 failed to appear. 2nd party management is proceeded ex parte on 8-6-16.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of Allahabad Bank (Regional Manager, Allahabad Bank, Bhopal) in terminating the services of workman Shri Jagdish Prasad Kandare w.e.f. 2006 is justified?	In Negative
(ii) If not, what relief the workman is entitled to?”	As per final order.

REASONS

5. Ist party workman filed affidavit of his evidence. In his affidavit, he has stated he was appointed by 2nd party on 25-6-96 on pay scale Rs.400 per month, appointment letter dated 25-6-96 was issued to him. Salary slips were issued to him on October 96, he was continuously working from 96 to 2004. Workman suffered from illness in 2003. He submitted medical certificate. Respondent management stopped him from work without terminating his services. He had approached Regional Office, Bhopal but nothing was done.

6. Workman has produced documents copies of appointment letter dated 25-6-96, letter dated 25-6-96, pay slips and copies of his applications. Evidence of workman remained unchallenged. 2nd party has not participated in reference proceeding. 2nd party challenged evidence of workman. Therefore I find no reason to disbelieve his unchallenged evidence. For reasons above, I record my finding in Point No.1 in Negative.

7. Point No.2- In view of my finding in Point No.1, action of the management is illegal, point to be decided is what relief the workman is entitled. 2nd party is directed to reinstate workman with continuity of service and full backwages.

8. In the result, award is passed as under:-

- (1) The action of the management of Allahabad Bank (Regional Manager, Allahabad Bank, Bhopal) in terminating the services of workman Shri Jagdish Prasad Kandare w.e.f. 2006 is not proper and legal.
- (2) 2nd party is directed to reinstate workman with continuity in service and full backwages

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer